No. 08-

IN THE

Supreme Court of the United States

GEORGE R. PRITZKER,

Petitioner,

v.

THE SUPREME COURT OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITION FOR A WRIT OF CERTIORARI

WILLIAM J. HARTE
Counsel of Record
JESSE G. SHALLCROSS
WILLIAM J. HARTE, LTD.
111 West Washington Street
Suite 1100
Chicago, Illinois 60602
(312) 726-5015

Attorneys for Petitioner

221636

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED FOR REVIEW

1. Where a state bar applicant has already been certified by a committee on character and fitness, does a state court of last resort afford him due process of law when they *sua sponte* deny him admission to the practice of law without notice and a hearing regarding the basis for denial of his admission?

2. Where a state's bar admissions procedures allows the state court of last resort to hear or investigate confidential information that is not revealed to applicants, is there a violation of a bar applicant's due process right of confrontation when, despite already having received certification by a committee on character and fitness, he is denied notice and a hearing on the basis of the Court's *sua sponte* denial of his admission to the practice of law?

3. Is a state bar applicant who is refused admission to the practice of law based substantially on an arrest record for misdemeanor offenses with no convictions denied due process of law?

4. Where a state court of last resort has afforded a state bar applicant who has already received certification by a committee on character and fitness less process than at least one other similarly situated applicant and less process than every applicant who is denied certification by the committee, has there been a violation of equal protection of the law?

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CITATION TO OPINION BELOW

No opinion was rendered by the Court below. The November 17, 2008 Order of the Illinois Supreme Court disallowing Petitioner's application to practice law in the State of Illinois is attached hereto and incorporated at Appendix A. The Findings and Conclusions produced by the Committee on Character and Fitness of the Illinois Board of Bar Admissions ("Committee on Character and Fitness" or "Committee") is attached hereto and incorporated at Appendix B. The December 22, 2008 Order of the Illinois Supreme Court denying Petitioner's Motion for Reconsideration, Motion for setting of Briefing Schedule, and Motion for Setting of Oral Argument is attached hereto and incorporated at Appendix C.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). This is a case in controversy that involves a final judgment or decree rendered by the highest court of a State in which a decision could be had, namely the Supreme Court of the State of Illinois. Furthermore, the decree has unfairly impinged upon Petitioner's liberty interest in practicing law in the State of Illinois, an interest defined by this Court and protected by the United States Constitution under Section One of the Fourteenth Amendment.

STATUTES INVOLVED

U.S.C.A. Const. Amend. XIV § 1 - see Appendix D for applicable text.

Ill. Sup. Ct. R. 708 - see Appendix E for applicable text.

730 ILCS 5/5-6-3.1(f) - see Appendix F for applicable text.

STATEMENT OF THE CASE

Petitioner graduated from St. Louis University School of Law in January 2006. At or around that same time, Petitioner registered for the July 2006 Illinois Bar Examination and applied to the Illinois Board of Bar Admissions for admission to the state bar. Petitioner sat for and passed the bar exam, receiving his results in October 2006. However, the Illinois Supreme Court informed petitioner that he could not be admitted to the Illinois Bar because the Illinois Board of Bar Admissions had yet to certify that Petitioner possessed the good moral character to practice law in the State of Illinois.

In June 2007, Petitioner appeared before an informal three-person Inquiry Panel to answer the concerns of the Committee on Character and Fitness over matters disclosed by the Petitioner on his application for admission to the Illinois Bar. Petitioner had disclosed his arrest record, consisting of seven different arrests for various alleged offenses, none of which resulted in convictions. The Inquiry Panel refused

to certify that Petitioner presently possessed the requisite good moral character to practice law in the State of Illinois.

Petitioner requested a hearing before the Committee on Character and Fitness. In January and March of 2008, a two-day hearing was held before a five-person Hearing Panel of the Committee on Character and Fitness. At the two-day hearing, Petitioner presented evidence of his present good moral character and fitness to practice law in the State of Illinois. On September 17, 2008, the Committee issued its Findings and Conclusions regarding the hearing. The Committee found, by a 3-to-2 vote, that Petitioner presently possessed the requisite good moral character and fitness to practice law in the State of Illinois. A true and correct copy of said Findings and Conclusions is attached hereto and incorporated at Appendix B.

The two dissenting members of the Committee were particularly troubled with Petitioner's arrest record as well as his history of alcohol and drug abuse. See Appendix B, Dissent, pp. 60a-63a. Nevertheless, none of Petitioner's arrests ever yielded convictions, as all of the charges had been either dropped, nolle prosecuted by the state, or dismissed after completion of supervision and fines, including any cases still pending during the proceedings. See Appendix B, pp. 5a-8a.

Thereafter, the Findings and Conclusions of the Committee were transmitted to the Illinois Supreme Court. On November 17, 2008, the Illinois Supreme Court, *sua sponte* and without opinion, issued an Order disallowing the Petitioner's application for admission to

the Master Roll of Attorneys in the State of Illinois. See Appendix A. Petitioner subsequently filed a motion with the Court for reconsideration of its order, for setting of a briefing schedule, and for the setting of oral argument, and this motion was denied without opinion on December 22, 2008. See Appendix C.

REASONS FOR GRANTING THE PETITION

This case presents significant issues related to the process due an applicant to the legal profession in a chosen state. While the error complained of is the particular actions of the Illinois Supreme Court, the process employed by the State of Illinois in determining the character and fitness of applicants is similar to that employed by every state. Thus, it is a matter of nationwide importance that this Honorable Court provide guidance to the individual states in order to avoid the arbitrary exercise of judicial power and to protect the rights of due process and equal protection of the law held by those individuals qualified to claim a present right to practice a chosen profession.

Often the duty to distinguish between those applicants who are fit to practice law and those who are not is delegated by the state supreme court to a committee on character and fitness. However, the state, via its court of last resort, ultimately wields the inherent power of deciding who is fit and who is not fit to practice law in that state. See *In re Edward A. Loss III*, 119 Ill.2d 186, 192 (1987), citing *In re Application of Day*, 181 Ill. 73 (1899). Nevertheless, it cannot Constitutionally be the case that a state court of last resort may ignore its own committee's certification of an applicant's

character and fitness and *sua sponte* deny the applicant's admission to the state bar without further process or explanation.

While this does present a case of first impression in this Honorable Court, requiring the Court's guidance to Illinois and the bar admissions committees and high courts of the other forty-nine states, this Honorable Court is no stranger to the concept of due process and equal protection of the laws in the context of state bar admissions. The order of the Illinois Supreme Court denying Petitioner's application without justification is particularly inconsistent with this Honorable Court's mandates of due process in state bar admissions procedures as set forth in *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963), and *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232 (1957). But these cases are more than fifty years old, the various state courts of last resort require further guidance on the topic of due process and equal protection in the context of state bar admissions, and the present case reveals new important federal questions on this topic.

Additionally, the order of the Illinois Supreme Court is incompatible with this Honorable Court's test for due process as established in *Matthews v. Eldridge*, 424 U.S. 319 (1976), conflicts with relevant decisions of other state courts of last resort, starkly contrasts with the Illinois Supreme Court's own treatment of the bar applicant in *In re Loss*, and flies in the face of the Due Process and Equal Protection clauses of Section One of the Fourteenth Amendment to the United States Constitution. For the above and foregoing reasons,

Petitioner respectfully requests a grant of writ of certiorari to the Illinois Supreme Court in order to redress this grievous error and to provide guidance to the state courts of last resort.

I. Whether A State Bar Applicant Who Has Already Been Certified By A Committee On Character And Fitness Receives Due Process Of The Law When A State Court Of Last Resort *Sua Sponte* Denies Him Admission To The Practice Of Law Without Notice And A Hearing Regarding The Justifications For The Denial Of His Admission Presents An Important Federal Question That Has Never Been Settled By This Honorable Court.

Procedural due process imposes constraints on government decisions which deprive individuals of a right or a liberty interest within the meaning of the Due Process Clause of the Fourteenth Amendment. *Matthews*, 424 U.S. at 332; see U.S.C.A. Const. Amend. XIV § 1. The practice of law is one such liberty interest. This Honorable Court has unequivocally stated, "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." *Willner*, 373 U.S. at 102, citing *Schware*, 353 U.S. at 238-39. Due process requires that such a person be given "notice of the case against him and an opportunity to meet it." *Matthews*, 424 U.S. at 348-49, citing *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 23, 171-72 (1951) (Frankfurter, J., concurring).

In the instant case, after Petitioner was certified by the Committee on Character and Fitness, he was given

neither notice of further proceedings against him, nor any opportunity to meet them. The next communication Petitioner received was the Order of the Illinois Supreme Court denying his admission to the Illinois Bar, without notice of any proceedings held and without justification or even minimal explanation. Whatever justification for the Illinois Supreme Court's denial of Petitioner's application to the Illinois Bar, Petitioner was not afforded a meaningful opportunity to confront it. This process, or lack thereof, is inconsistent with this Honorable Court's test for due process under *Matthews v. Eldridge* and this Honorable Court's prior case law regarding due process in the context of state bar admissions. Nevertheless, Petitioner respectfully requests that this Honorable Court clear up the confusion and answer the important federal question of what process, if any, is due a state bar applicant who has already been certified by his state's committee on character and fitness and whose state supreme court may disagree with that certification.

A. The Illinois Supreme Court's Actions Denying Petitioner Notice And A Hearing Regarding His Denial of Admission To The State Bar Is Inconsistent With The *Matthews v. Eldridge* Test For Due Process.

To comply with Constitutional Due Process, procedures must "be tailored, in light of the decision to be made, to 'the capacities and circumstances of those who are to be heard,' to insure that they are given a meaningful opportunity to present their case." *Matthews*, 424 U.S. at 349, citing *Goldberg v. Kelly*, 397 U.S. 254, 268-69 (1970). In *Matthews v. Eldridge*, this

Honorable Court established the test for determining whether procedures employed were tailored, in light of the circumstances, to insure a meaningful opportunity to be heard. Due process requires a consideration of three factors: (i) "the private interest that will be affected by the official action;" (ii) "the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Matthews*, 424 U.S. at 335.

1. An Applicant's Private Interest In The Practice Of Law Is Great.

The private interest that is affected by the Illinois Supreme Court's outright denial of admission to an applicant already certified by the Committee on Character and Fitness is one of extreme importance. It is an applicant's liberty interest in the practice of law. It is his chosen profession, his livelihood. The applicant has expended an enormous amount of time, money, and effort in pursuit of this interest. Furthermore, it is an interest that may not be extinguished except for valid reasons. *Schware*, 353 U.S. at 238-39. The practice of law is not a matter of a state's grace. *Id.* at 239, citing *Ex parte Garland*, 4 Wall. 333, 379 (1867). While a state can require high standards of qualification, such as good moral character or proficiency in its law, it may not exclude an applicant from its bar when there is no basis for finding that he fails to meet these standards. *Schware*, 353 U.S. at 239.

2. The Risk Of Erroneous Deprivation Of That Interest Is Great, And The Value Of Additional Procedural Safeguards Is Great.

The risk of erroneous deprivation of an applicant's interest in practicing law in Illinois through the procedures used by the State of Illinois is enormous. Petitioner was certified by the Committee on Character and Fitness and subsequently denied admission by the Illinois Supreme Court without so much as a whisper. The Illinois Supreme Court itself has agreed that there is justification in the argument that "a denial of admission without further procedures following certification would constitute a denial of due process." *Loss* 119 Ill.2d at 193.

The current procedures for admission to the Illinois Bar present a distressing probability that applicants like Petitioner, having already been certified by the Committee on Character and Fitness, are being denied admission by the Illinois Supreme Court without justification or based on hearsay evidence the applicants will never have the chance to confront. According to Illinois Supreme Court Rules, after the Committee on Character and Fitness finds that an applicant possesses good moral character and fitness to practice law, it shall so certify to the Board of Admissions to the Bar. Ill. Sup. Ct. R. 708(f). The Board of Admissions to the Bar then transmits the certification to the Illinois Supreme Court "together with any additional information or recommendation the Board deems appropriate when all other admission requirements have been met." *Id.* The Court may even "initiate review, *sua sponte*, or upon

the basis of information regardless of its source. It may inquire into events subsequent to the certification or require additional information concerning events which occurred prior to the hearing before the committee." *Loss*, 119 Ill.2d at 193. This leaves open the possibility that the Illinois Supreme Court relies on additional information that an applicant is unable to confront in deciding whether or not to deny his or her admission to the Illinois Bar, despite certification by the Committee on Character and Fitness.

The opportunity of the Illinois Supreme Court to have access to information not on the record of the Findings of the Committee on Character and Fitness and not made known to the applicant is the very same concern voiced by Justice Simon, the dissenting judge on the bench of the Illinois Supreme Court in *Loss*. After first noting that it is unusual for the Illinois Supreme Court to review a positive recommendation of an applicant by the Committee on Character and Fitness, Justice Simon then stated:

> . . . there are no formal procedures for keeping the court apprised of an applicant's interaction with the Committee on Character and Fitness. (citation omitted). The only way this court could have been advised of [the applicant's] situation, therefore, was through an informal communication. The possibility that this unusual proceeding was initiated on the basis of rumors or gossip turns the entire admission process into a sham. It appears that those who can grab the court's ear and are displeased with an applicant can trigger an additional

> inquiry, by this court itself, into the applicant's moral character. To adequately address the question of his good character and fitness [the applicant] has a right to know how and why his application was singled out for such special attention.

Loss, 119 Ill.2d at 221.

Indeed, Justice Ryan, in his concurring opinion, admitted, "As long as due process considerations are honored in proceedings to admit applicants, this court is not limited in its sources of information." *Id.* at 204. Yet, this Honorable Court has wisely stated, "Procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood." *Willner*, 373 U.S. at 103. There presently exists a terrible and substantial risk that Petitioner and similarly situated applicants are being erroneously deprived of their interest in practicing law in the State of Illinois because of a lack of meaningful opportunity to confront secret evidence against them.

Even were it not the case that the Illinois Supreme Court accessed outside information in Petitioner's case, Petitioner was nevertheless afforded no notice, explanation, or opportunity to be heard by the Illinois Supreme Court as to its *true* reasons for denying his application. One is left to simply speculate as to what basis the Illinois Supreme Court relied upon in denying Petitioner's application. Without being held to account for its decision, the Illinois Supreme Court is free to deny any applicant to its state bar on any basis (race, sex, religion, age, personal dislike, etc.), an abhorrently

discriminatory scenario not possible in any other context under the laws of the United States.

The probable value of additional procedural safeguards to the admissions process in Illinois is enormous. Notice of additional evidence and a fair hearing on that evidence would ensure that an applicant who has been certified by the Committee on Character and Fitness has a meaningful opportunity to confront the additional evidence that the Illinois Supreme Court has gleaned since the applicant's certification. Notice and a fair hearing would afford a certified applicant the opportunity to answer for any conduct or activity the Illinois Supreme Court has chosen to focus especially upon, newly gleaned or otherwise, and which took a backseat at the Committee Hearing. Despite the risk of erroneous deprivation of Petitioner's interest and the value of such additional procedural safeguards, the Illinois Supreme Court simply denied Petitioner's motion for reconsideration of its Order, for the setting of a briefing schedule, and for oral argument.

3. Additional Or Substitute Procedural Requirements Would Entail Very Low Administrative And Fiscal Burdens For The Illinois Supreme Court And The Illinois Board Of Admissions To The Bar.

The Illinois Supreme Court has already taken it upon itself to review certain applicants who have received certification by the Committee on Character and Fitness. Any additional procedural requirements for the benefit of those applicants would therefore present minimal intrusion into the bar application

process. All that would be required is (i) a notice sent to the bar applicant informing him or her of the basis upon which the Illinois Supreme Court is reluctant to admit the applicant to the state bar plus any additional information that the Illinois Supreme Court has acquired; and (ii) a brief hearing addressing only those concerns set forth in the notice. Illinois likely has an interest in streamlining the bar application process, freeing up its highest judicial office to perform arguably more pressing functions, and allowing that judicial office to maintain the inherent power to decide who is fit to practice law within the state's borders.

None of these interests would be encroached upon by affording applicants in Petitioner's unique situation with the aforementioned additional procedural safeguards. Essentially, once the applicant receives notice of additional concerns of the Illinois Supreme Court, his hearing could be in front of either the Illinois Supreme Court, or if that would be too burdensome on the Court, a Review Board like the kind already used as a review mechanism for attorneys disciplined by the Hearing Board of the Committee on Character and Fitness. This would eliminate time and fiscal requirements of establishing a new quasi-judicial body. The issues in the hearing would be confined only to those with which the Illinois Supreme Court is concerned, thus eliminating the time and fiscal requirements of a days-long character and fitness hearing. The Review Board would receive a copy of the Committee's Findings and the Illinois Supreme Court's notice establishing its concerns. The applicant, now prepared to address those concerns, would attempt to meet his burden of proof on the issues presented by those concerns. The Review

Board would then deny the petitioner's application or certify him to the Illinois Supreme Court. If the applicant is certified to the Illinois Supreme Court, the Court would ultimately decide if it agrees with the Review Board that the applicant met his burden on the issues of concern. This would allow the Illinois Supreme Court to have the final say without leaving an unsuccessful applicant who had passed the Committee on Character and Fitness uninformed as to the basis upon which his application was newly denied. Furthermore, the applicant will have already had notice and an opportunity to be heard on the Illinois Supreme Court's issues of concern when the applicant appeared in front of the Review Board. The applicant would receive due process, the bar application process would remain streamlined and relatively unchanged, and the Illinois Supreme Court would retain its inherent power to make the ultimate determination as to who is fit to practice law in the State of Illinois.

Another efficient alternative would be to ensure that the proceedings at the Illinois Supreme Court level of review become an adversarial system. The Court has already taken a small step in this direction within the context of the bar admissions process before. See *Loss*, 119 Ill.2d at 189 (the bar applicant in *Loss* was certified by the Committee on Character and Fitness, denied admission by the Illinois Supreme Court, and granted leave to file a petition to the Illinois Supreme Court, whereupon the Administrator of the Attorney Registration and Disciplinary Commission was directed by the Court to file a response to that petition and argue against the bar applicant's admission). The Illinois Supreme Court is currently free to act upon outside

information and recommendations, simply by virtue of the fact that the Illinois Bar Admissions process is a non-adversarial system at the Court's level of proceedings. Since there is no opposing party to the applicant in such proceedings, there is no adversarial way to call certain matters to the Court's attention other than outside information. See *Loss*, 119 Ill.2d at 204 (Justice Ryan, concurring). An adversarial system would safeguard against the dangers inherent in the present system. The Illinois Attorney General is the perfect candidate for presenting to the Illinois Supreme Court matters adverse to the bar applicant. The Attorney General is already tasked with the duty of representing the legal interests of the State of Illinois, and one of those interests currently shouldered solely by the Illinois Supreme Court at this level of proceedings is the "concomitant duty to protect the public from dishonesty and incompetency on the part of members of the bar." *Loss*, 119 Ill.2d at 192, citing *In re Application of Day, 181 Ill. 73* (1899). In an adversarial system, private counsel or the Illinois Attorney General could represent this interest and allow the Illinois Supreme Court to act as a neutral decision-maker, confining the evidence to the four walls of a hearing. This would eliminate the possibility of undue influence by information gleaned by the Illinois Supreme Court outside of the applicant's presence while preserving the valuable interests of the State of Illinois in safeguarding the public from dishonesty and incompetency on the part of members of the bar. Indeed, this concept was introduced by the Supreme Judicial Court of Maine to address the same concerns in the strikingly similar case of *In re Application of Alfred Feingold*, 296 A.2d 492 (1972). See *Id.* at 497-98.

Despite the feasibility of additional procedural safeguards and the low administrative and financial burdens on the state, Illinois has afforded no meaningful hearing or review mechanisms for those applicants who have been certified by the Committee on Character and Fitness and who, for nameless reasons, the Illinois Supreme Court is reluctant to admit to the Illinois Bar. Petitioner's bar application was denied by the Illinois Supreme Court without so much as a whisper, failing this Honorable Court's test for due process as established in *Matthews v. Eldridge*. This presents an important federal question: What is the amount of process due an applicant to a state bar who has already been certified by the committee on character and fitness and whose state supreme court is reluctant to allow the applicant admission? Petitioner respectfully requests that this Honorable Court give guidance to this question.

B. The Illinois Supreme Court's Actions Denying Petitioner Notice And A Hearing Regarding The Basis For His Denial Of Admission To The State Bar Are Inconsistent With *Willner v. Committee On Character And Fitness*, *Schware v. Board Of Bar Examiners*, And Relevant Decisions Of Various State Courts Of Last Resort.

A state may not exclude a person from the practice of law in a manner that contravenes the Due Process clause of the Fourteenth Amendment. *Schware*, 353 U.S. at 238-39. "'Those who are brought into contest with . . . Government in a quasi judicial proceeding aimed at the control of their activities are entitled to be fairly

advised of what the Government proposes and to be heard upon its proposals before it issues its final command.'" *Willner*, 373 U.S. at 105, quoting *Morgan v. U.S.*, 304 U.S. 1, 18-19 (1938). Petitioner was denied notice and a hearing regarding the basis upon which the Illinois Supreme Court *sua sponte* denied his admission to the Illinois Bar. The Illinois Supreme Court has essentially decided the federal question of what amount of process is owed to a state bar applicant already certified by the state's committee on character and fitness and its answer is *none*.

That decision conflicts not only with this Honorable Court's due process mandates in *Schware* and *Willner*, but also with relevant decisions of various state courts of last resort: *Dexter v. Idaho State Bar Board of Commissioners*, 116 Idaho 790 (1989); *In the Matter of the Application of Childs*, 101 Wis.2d 159 (1981); and *In re Application of Feingold*, 296 A.2d 492 (Maine 1972). In these decisions of state courts of last resort, the courts have refused to deny an applicant his liberty interest in the practice of law based on a process in which the applicant was neither apprised of the basis for his denial of admission nor afforded an opportunity to respond to that basis. In *Dexter*, the Supreme Court of Idaho held that a bar applicant was denied due process when the admissions board failed to issue findings of fact and conclusions of law stating particularly what acts or omissions of the applicant made him unfit to practice law, remanding the cause to the Board's commission. 116 Idaho at 793. In contrast, the Illinois Supreme Court has denied Petitioner admission to the practice of law while failing to set forth particularly what acts or omissions of Petitioner have made him unfit to practice

law. In *Childs*, the Supreme Court of Wisconsin held that a bar applicant was denied due process when the admissions board failed to notify him of the grounds for refusal of certification of his moral character and failed to afford him the opportunity to challenge those grounds. 101 Wis.2d at 163. In contrast, the Illinois Supreme Court has found no due process problems with its decision to deny Petitioner admission to practice law, despite the fact that it has never notified Petitioner of the grounds for refusal of his application to the Illinois bar and has denied Petitioner's motion for an opportunity to respond to those grounds.

In re Application of Feingold, 296 A.2d 492 (1972), presents a strikingly similar situation as the instant case, however the Supreme Judicial Court of Maine corrected its own due process violation before the case could make its way to this Honorable Court. In *Feingold*, the bar applicant had already been certified by the Maine Board of Bar Examiners that he was a person of good moral character and fitness to practice law when a single Justice of the Supreme Judicial Court of Maine denied his motion for admission to practice law on the ground that the applicant's qualifications of good moral character were not satisfactory. 296 A.2d at 495. It should be noted that the Justice did afford the applicant a hearing in order to address the concerns which were causing the Justice reluctance to admit the applicant. *Id.* at 500. Nevertheless, the Supreme Judicial Court, per Chief Justice Dufresne, found that the applicant had not been accorded due process of a full and proper hearing because the conclusions of the single Justice were reached without giving due consideration to the applicant's certification by the Board of Bar Examiners

and were based either on insufficient supportive evidence or on *ex parte* evidence not made a part of the record. *Id.* at 501. In the instant case, Petitioner was not even given notice and a hearing by the Illinois Supreme Court. While one is left to speculate upon what evidence the Illinois Supreme Court based its order denying Petitioner admission to the practice of law, the fact remains that Petitioner received no notice of the basis and no meaningful opportunity to address it. Either this was a clear violation of due process or the other various state courts of last resort have misinterpreted the Due Process Clause of the Fourteenth Amendment. In any event, Petitioner respectfully requests that this Honorable Court settle the matter once and for all.

It is worth addressing the point that Petitioner did in fact receive a hearing, at least before the Committee on Character and Fitness. At that hearing, he was afforded the opportunity to address the issues and concerns of the committee; he accomplished this to the extent of achieving certification by the committee. However, Petitioner was denied notice and a hearing before the judicial body whose failure to be convinced of his good moral character or fitness to practice law controlled the decision to deny him admission - the Supreme Court of Illinois. "The requirements of procedural fairness are not exhausted in the taking or consideration of evidence, but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps." *Willner*, 373 U.S. at 105, citing *Morgan v. U.S.*, 304 U.S. 1, 18-19 (1938). "The right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'"

Fuentes v. Shevin, 407 U.S. 67, 80 (1972), quoting *Baldwin v. Hale*, 68 U.S. 223 (1864). Petitioner's Illinois Bar application procedure was a model of due process up to his certification by the Committee on Character and Fitness. Procedural fairness was extinguished at the point where Petitioner was denied admission by the Illinois Supreme Court without notice and an opportunity to confront the basis for his denial of admission.

While the instant case presents a federal question of first impression, the actions of the Illinois Supreme Court are clearly in contrast with this Honorable Court's promulgations of due process in *Willner v. Committee on Character and Fitness*. 373 U.S. 96 (1963). In *Willner*, a New York Bar applicant, Nathan Willner, had an opportunity to be heard on several occasions before a character and fitness committee regarding his character and fitness to practice law in the State of New York. *Id.* at 100. Subsequent to those hearings, Willner was twice denied admission by the Committee on Character and Fitness. *Id.* After the second denial of admission, Willner repeatedly petitioned the Appellate Division for either a review of the decision of the committee or at least a furnishment of a statement of the basis for his denial of admission. *Id.* at 100-01. These petitions were denied without opinion. *Id.* After granting certiorari, this Honorable Court, per Justice Douglas, held:

> It does not appear from the record that either the Committee or the Appellate Division, at any stage in these proceedings, ever apprised petitioner of its reasons for failing to be

> convinced of his good character. Petitioner was clearly entitled to notice of and a hearing on the grounds for his rejection either before the Committee or before the Appellate Division.

Id. at 105, citing *Goldsmith v. U.S. Board of Tax Appeals*, 270 U.S. 117 (1926).

In the instant case, Petitioner, like the bar applicant in *Willner*, has never been apprised of the reasons for the relevant judicial body failing to be convinced of his good character and fitness to practice law. Unlike Willner, however, Petitioner was in fact certified by the Committee on Character and Fitness. While this nuance does present a case of first impression to this Honorable Court, it makes no sense for Petitioner to be entitled to less process than the applicant in *Willner*. Nevertheless, this case presents a prevalent, important issue of due process that this Honorable Court may once and for all settle for the benefit of all of the bar admissions bodies of each of the fifty states.

II. The Illinois Supreme Court Denied Petitioner His Due Process Right Of Confrontation When They Denied Him The Opportunity To Confront The Illinois Supreme Court's Basis For Denial Of His Admission To The Practice Of Law, Inconsistent With *Willner V. Committee On Character And Fitness* And A Number Of State Courts Of Last Resort.

Petitioner's due process rights were violated when he was not afforded the right to confront the basis upon which the Illinois Supreme Court denied his admission to the practice of law in Illinois. Procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood. *Willner*, 373 U.S. at 103. Indeed, in the context of admission to the practice of law, this same view has been taken by several state courts. *Id.* at 103-04, citing *Coleman v. Watts*, 81 So.2d 650 (Fla. 1955) (holding that a violation of due process occurred when an applicant was denied admission based on confidential information of which the applicant was not apprised); *Application of Burke*, 87 Ariz. 336 (1960) (admonishing that a denial of an applicant's admission to the practice of law cannot be based solely upon secret reports not revealed to the applicant); *In re Crum*, 103 Or. 296 (1922) (requiring that a bar applicant be entitled to confront witnesses by subjecting them to cross-examination and invoke the protection of the rules of evidence); *Moity v. Louisiana State Bar Ass'n*, 239 La. 1081 (1960) (holding that a bar applicant complaining of arbitrary and unreasonable denial by the committee is entitled to a hearing on those matters which form the basis of the committee's action and the opportunity to present evidence and cross-

examine witnesses against him); see also *Appeal of Icardi*, 436 Pa. 364 (1970) (holding that the failure to provide a bar applicant with the opportunity to confront and cross-examine authors of statements and documents which the State Board of Law Examiners concluded overcame the applicant's prima facie evidence of good character deprived him of procedural due process); and *Application of Kellar*, 81 Nev. 240 (1965) (holding that confidential reports and testimony of witnesses taken at a hearing without according the applicant the right of confrontation and cross-examination and without notice to the applicant as to the relevant issues could not prevail against the established good character of the applicant).

Admittedly, Petitioner cannot possibly be certain that the Illinois Supreme Court based its decision on accusations or secret information that it had access to, simply because Petitioner has never been informed of the Court's basis for denial of his application. Yet, as explained above, the procedures employed by the Illinois Supreme Court allow for *sua sponte* consideration of additional evidence and outside recommendations which Petitioner and other applicants have no knowledge of and no meaningful opportunity to confront. See *Loss*, 119 Ill.2d at 192-93, 203-04, 220-21. The transmission of word-of-mouth information and recommendations within the Illinois bar admissions process are simply the fallout of an imperfect system in which "there is no adversarial way to call these matters to the court's attention." *Id.* at 204 (Justice Ryan, concurring). So, absent notice and a hearing regarding the basis for Petitioner's denial of admission, Petitioner is left to speculate as to what additional information the Illinois Supreme Court had

acquired from the Illinois Board of Bar Admissions or other, private sources when it *sua sponte* denied Petitioner admission to the Illinois Bar.

Petitioner had already presented prima facie evidence of his good character and fitness to practice law before the Committee on Character and Fitness, as evidenced by his certification by the Committee. Ironically, the Illinois Supreme Court, who in its wisdom may initiate a review upon the basis of information regardless of its source and who may inquire into events subsequent to the certification or prior to the hearing before the committee, denied Petitioner admission to the Illinois Bar without any explanation. See *Loss*, 119 Ill.2d at 192-93. As Petitioner was never granted notice or a hearing on the basis of the Illinois Supreme Court's denial of his admission, Petitioner was never afforded the opportunity to confront confidential, additional recommendations or statements against him, evidence which the Illinois Supreme Court undoubtedly had access to. This amounted to a violation of his due process rights and starkly contrasts with *Willner v. Committee on Character and Fitness* and the views taken by the various state courts of last resort.

The bar applicant in *Willner*, like Petitioner in the instant case, alleged that the committee responsible for certification had access to evidence that he never had the opportunity to confront, in particular accusations and adverse statements of private individuals. 373 U.S. at 101-02. Willner believed that this secret evidence impacted the decision to deny him admission. *Id.* at 102. Like Petitioner, Willner could not be certain, simply because he was never afforded the opportunity to

confront the basis for his denial of admission. *Id.* This Honorable Court, per Justice Douglas, stated, "We think the need for confrontation is a necessary conclusion from the requirements of procedural due process in a situation such as this." *Id.* at 104.

Similarly, where there was opportunity for the Illinois Supreme Court to be influenced by outside accusations or recommendations that Petitioner has neither knowledge of nor opportunity to rebut, procedural due process required that he be afforded the opportunity to confront the evidence against him. As Petitioner was never given the opportunity to confront the evidence relied upon by the Illinois Supreme Court, whatever its source, Petitioner was denied due process, in contravention to *Willner v. Committee on Character and Fitness* and the view taken by various state courts of last resort. Petitioner respectfully requests that this Honorable Court address this important issue of federal law in order to cement the view taken by other state courts of last resort and correct the grievous error of the Illinois Supreme Court.

III. The Illinois Supreme Court's Refusal To Admit Petitioner To The Practice Of Law Based Substantially On An Arrest Record For Misdemeanor Offenses With No Convictions Denied Him Due Process And Was Inconsistent With *Schware v. Board Of Bar Examiners.*

Petitioner has valid reason to believe that the Illinois Supreme Court based its denial of his admission to the practice of law in Illinois substantially on Petitioner's arrest record, in contradiction to this Honorable Court's treatment of the bar applicant in *Schware v. Board of Bar Examiners*. Because Petitioner has not been notified of the basis upon which the Illinois Supreme Court has ordered that his application for admission to the Illinois Bar be denied, Petitioner is forced to speculate upon which particular evidence in the record the Court has rested its decision. Nevertheless, the two dissenting members of the Committee on Character and Fitness who certified Petitioner made it clear that Petitioner's arrest record was troublesome to them. See Appendix B, pp. 60a-63a. Absent any disclosure by the Illinois Supreme Court of additional evidence and absent any other rational basis, it is fair to assume that the Court's decision was based, at least in substantial part, on the arrest record.

Yet, even in the context of assessing a bar applicant's character and fitness, arrests hold very little, if any probative value. As this Honorable Court clearly stated in *Schware*:

> The mere fact that a man has been arrested has very little, if any, probative value in

> showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. When formal charges are not filed against the arrested person and he is released without trial, whatever probative force the arrest may have had is normally dissipated.

353 U.S. at 241.

In *Schware*, a New Mexico bar applicant was arrested twice on suspicion of criminal syndicalism for participating in labor organization strikes and once for violating the Neutrality Act of 1917 by attempting to induce men to volunteer for duty on the side of the Loyalist Government in the Spanish Civil War. *Id.* at 237. The Board of Bar Examiners of the State of New Mexico denied him admission on the basis of his several arrests, his past use of aliases, and his former membership in the Communist Party, and the New Mexico Supreme Court upheld the decision. *Id* at 234-35, 238. This Honorable Court reversed and remanded the case, holding that the State of New Mexico deprived the applicant of due process in that the evidence upon which the state relied - the arrests for offenses for which the applicant was neither tried nor convicted, the past use of assumed names, and former membership in the Communist Party - could not be said to raise substantial doubts about his present good moral character. *Id.* at 246-47.

Petitioner's arrest record consisted of seven arrests for misdemeanor offenses, none of which yielded a trial

or a conviction, over a period of approximately twenty-five years. Three of the arrests occurred over twenty years ago, during the victim's youth. Petitioner submits that none of these incidents, in and of themselves, would trigger disciplinary proceedings from the Illinois Attorney Registration and Disciplinary Commission were Petitioner already a member of the Illinois Bar.

Each and every one of Petitioner's seven arrests resulted in either no charges being filed, a nolle prosecution by the state, or an outright dismissal of charges after supervision or payment of a fine. The two battery charges - the unfortunate result of misunderstandings by both parties involved - were dismissed or nolle prosecuted outright by the state. The 1992 DUI and 2005 DUI charges were for crimes of intoxication or possession and were dismissed after completion of supervision. Under Illinois Law, discharge and dismissal upon the successful conclusion of a disposition of supervision is deemed without adjudication of guilt and is not termed a conviction for purposes of disqualification or disabilities imposed by law upon the conviction of a crime. 730 ILCS 5/5-6-3.1(f). Admittedly, the type of disqualification contemplated by this statute is for only those rights and privileges statutorily denied to a convicted offender (i.e. the rights to vote, hold public office, or possess a firearm), a category which the right to practice one's chosen profession does not necessarily belong. See *People v. Bloomberg*, 378 Ill.App.3d 686 (3rd Dist. 2008). Nevertheless, the Illinois Supreme Court's silent dismissal of both Petitioner's application and his subsequent motion for reconsideration, despite certification by the Committee on Character and Fitness,

has treated Petitioner as though his arrest record categorically disqualifies him from the practice of law in Illinois.

None of the charges, taken by themselves or as a whole, rise to such a level of moral turpitude as to warrant the Illinois Supreme Court's disregard of the certification of Petitioner by a properly constituted quasi-judicial committee delegated by the Court with the duty of determining Petitioner's good character. Such a decision by the Court conflicts with this Honorable Court's treatment of the bar applicant in *Schware* and the State of Illinois's own statute governing the treatment of dismissal of charges upon completion of supervision. Petitioner respectfully requests that this Honorable Court correct the Illinois Supreme Court's oversight of this applicable law.

IV. The Illinois Supreme Court Has Afforded Petitioner Less Process Than Other Bar Applicants Similarly Situated, Without Any Rational Basis, In Violation Of The Equal Protection Clause Of The Fourteenth Amendment And Decisions Of This Honorable Court Interpreting The Clause.

The Equal Protection Clause's command that no state shall "deny to any person within its jurisdiction the equal protection of the laws" is essentially a direction that all persons similarly situated should be treated alike. U.S.C.A. Const. Amend. XIV § 1; *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 439 (1985), citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982). Where a state actor has treated persons who are similarly situated very differently, the critical question

is whether there is an appropriate governmental interest suitably furthered by the differential treatment. *Police Dept. of the City of Chicago v. Mosley*, 408 U.S. 92, 94-95 (1972). Unless the differential treatment jeopardizes the exercise of a fundamental right or categorizes on the basis of suspect characteristics, the Equal Protection clause requires only that the differential treatment rationally further a legitimate state interest. *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1961). Stated another way, differential treatment violates equal protection of the laws if it does not rationally further a legitimate purpose of the state. See *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356 (2001).

In the instant case, the Illinois Supreme Court has treated Petitioner differently than similarly situated individuals, without any rational basis. In *Loss*, an applicant who was already certified by the Committee on Character and Fitness yet refused admission to the Illinois bar received notice and a fair hearing regarding the Illinois Supreme Court's justifications for challenging his character and fitness. 119 Ill.2d 186. In the instant case, that same Court has denied Petitioner notice and a hearing regarding the reasons for its refusal to admit him to the practice of law.

Other bar applicants who do not even receive certification by the Committee on Character and Fitness are at least informed of the reason for denial of their certification, after they have had the opportunity to present evidence to the Committee. Additionally, the Illinois Supreme Court Rules provide those bar applicants with a mechanism for review if they are

aggrieved by the decision of the Committee. Petitioner was never informed of the basis for denial of his admission to the practice of law, nor was he allowed the opportunity to present evidence to the judicial body who denied him. Furthermore, the Illinois Supreme Court rules provide no process for review if he is met with an unfavorable decision after already being certified by the Committee. The Court has essentially decided the important federal question of whether any further process is owed a bar applicant already certified by a committee on character and fitness and whose Supreme Court is simply reluctant to grant him admission to the practice of law, in a manner that conflicts with the Equal Protection Clause and this Honorable Court's case law interpreting that clause.

A. The Illinois Supreme Court's Decision To Afford Petitioner With Less Process Than The Bar Applicant In *In Re Loss*, Without Serving Any Legitimate Purpose, Is In Conflict With The Equal Protection Clause.

While the procedural posture of this case is one of first impression to this Honorable Court, it is not entirely unfamiliar to the Illinois Supreme Court. In *In re Loss*, 119 Ill.2d 186 (1987), the bar applicant, Loss, had been certified by the Committee on Character and Fitness after a full hearing. The Illinois Supreme Court subsequently denied Loss admission to the practice of law. However, the Court granted him leave to file a petition for review, and the issues were briefed and heard by the Court. The majority noted, "[Loss] argues, *with justification*, that a denial of admission without further procedures following certification would constitute a

denial of due process." *Id.* at 193 (emphasis added). While Loss ultimately lost, the Illinois Supreme Court did grant him notice and a hearing. It is clear then, that by the Court's language and its very actions, that it believed that a denial of admission after certification without further proceedings would constitute a denial of due process. Without any rational basis, the Illinois Supreme Court has now denied Petitioner this same level of process, in conflict with the Equal Protection clause of the Fourteenth Amendment and this Honorable Court's case law interpreting the clause.

This Honorable Court properly rejected Loss's Petition for Writ of *Certiorari* in *Loss v. Illinois Supreme Court*, 484 U.S. 999 (1988), for want of a federal question, as Loss had been given notice and an opportunity to be heard, consistent with the demands of due process. The present case, however, does present substantial federal questions, as Petitioner has not received a notice and a fair hearing, in violation of due process and equal protection of the law. Furthermore, Petitioner submits that clarification of the requirements of due process in the context of a bar applicant already certified by a committee on character and fitness can only be accomplished by this Honorable Court issuing a writ of certiorari to the Illinois Supreme Court to afford Petitioner at least the same level of process as that received by the bar applicant in *Loss*.

B. Unlike Bar Applicants Who Receive An Unfavorable Recommendation From The Committee On Character And Fitness At The Outset, Petitioner Has Been Afforded By The Illinois Supreme Court No Meaningful Process Or Mechanism For Review Of An Unfavorable Decision, Without Any Rational Basis For The Discrimination.

Illinois Bar applicants who do not receive a favorable recommendation by the Committee have had the opportunity to exercise their right to present evidence to that Committee pertaining to the relevant character and fitness concerns of the Committee. Il. Sup. Ct. R. 708(g). Additionally, the Committee issues a report of its findings and conclusions stating the basis upon which it has refused to certify the applicant. Il. Sup. Ct. R. 708(f). Petitioner, who was denied admission by the Illinois Supreme Court without so much as a whisper, received neither notice and a hearing nor any explanation as to the basis upon which the Court has refused to admit him to the practice of law.

Illinois Bar applicants who do not receive certification by the Committee may petition the Illinois Supreme Court for review of the Committee's decision, and the Committee has a chance to respond. This review mechanism is provided for by Illinois Supreme Court Rule 708(g). In contrast, the Supreme Court Rules make no provision for review for applicants who receive certification by the Committee but are denied admission *sua sponte* by the Illinois Supreme Court. Petitioner attempted to petition the Court for review of its own decision and the opportunity to be heard on the matter but that motion was denied without opinion.

There exists no rational basis to treat Petitioner differently than any other applicant to the Illinois Bar. No legitimate government interest is served by affording Petitioner, or any other hapless applicant who should happen to receive certification of his character and fitness by the Committee yet silent denial of his admission by the Illinois Supreme Court, less process than other applicants to the Illinois Bar. The Court's discriminatory treatment of such applicants is thus a violation of the Equal Protection clause and this Honorable Court's case law interpreting that clause.

CONCLUSION

For the foregoing reasons, this petition for writ of *certiorari* should be granted.

Respectfully submitted,

WILLIAM J. HARTE
Counsel of Record
JESSE G. SHALLCROSS
WILLIAM J. HARTE, LTD.
111 West Washington Street
Suite 1100
Chicago, Illinois 60602
(312) 726-5015

Attorneys for Petitioner

APPENDIX

APPENDIX A — ORDER OF THE SUPREME COURT OF ILLINOIS FILED NOVEMBER 17, 2008

IN THE
SUPREME COURT OF ILLINOIS

M. R. 12409

In re:

George Robert Pritzker,

Bar Applicant

ORDER

The admission of George Robert Pritzker to the roll of attorneys licensed to practice law in Illinois is disallowed.

Order entered by the Court.

APPENDIX B — FINDINGS AND CONCLUSIONS BEFORE THE COMMITTEE ON CHARACTER AND FITNESS, SUPREME COURT OF ILLINOIS, FIFTH JUDICIAL DISTRICT DATED SEPTEMBER 17, 2008

BEFORE THE COMMITTEE ON CHARACTER AND FITNESS SUPREME COURT OF ILLINOIS FIFTH JUDICIAL DISTRICT

IN RE:	Application of George R. Pritzker
COMMISSIONERS:	Roy C. Dripps, Chairman John A. Clark Thomas Lacy Margaret J. Lowery Rebecca Whittington
HEARING DATES:	January 18, 2008 March 7, 2008
COUNSEL FOR PETITIONER:	Robert O. Crego
COUNSEL RETAINED TO PRESENT ADVERSE MATTERS:	Jack Leskera
DECISION:	Recommended for certification

FINDINGS AND CONCLUSIONS

The Committee finds, by a vote of three to two, that the Applicant has sustained his burden of proving that he possesses the requisite character and fitness to

practice law. The entire Committee recognizes serious concerns regarding Applicant's admission to the Bar. The majority of the Committee finds that Applicant has provided satisfactory responses to those concerns. The dissenting members of the Committee find that Applicant has not adequately satisfied the Committee's concerns and therefore would not approve his admission to the Bar. We provide an extensive recitation of facts in this matter for two related reasons. First, the majority and dissenting members of the Committee have focused on different aspects of this necessarily fact-intensive inquiry. Second, the Committee as a whole trusts that Applicant will recognize that the most important part of this decision for him personally is not the majority opinion which concludes that Applicant has satisfied his burden of proof before the Committee, but rather the dissent which raises legitimate questions that the Applicant must continue to answer by his conduct throughout his career in the practice of law.

STATEMENT OF FACTS

Mr. George R. Pritzker ("Applicant" or "Mr. Pritzker") received his juris doctor degree from Saint Louis University School of Law in January 2006 (Tab A, Proof of Legal Education For Admission to the Bar, Certificate of Dean of Law School, Dated January 13, 2006, Board Group Exhibit 3, January 18, 2008), and passed the July 2006 Illinois Bar Exam (Tab B, Illinois Board of Admissions to the Bar, Character and Fitness Record List, p. 1). On his Character and Fitness Questionnaire, submitted January 31, 2006, Applicant answered "Yes" to questions 38 and 48.

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Question 38 asks:

> 38. have you ever filed for relief under federal bankruptcy law?
> (Tab C) and D, Character and Fitness Questionnaire, dated January 31, 2006, pp. 18 and 20, respectively).

With respect to question 38, Applicant disclosed that he filed a Chapter 7 bankruptcy petition on June 18, 2004, and he received a discharge (Tab E, Form 38/ Record of Bankruptcy, Character and Fitness Questionnaire, dated January 31, 2006). He explained that he had filed bankruptcy because he had accumulated considerable debt related to his 2001 divorce (Tab E, Form 38/Record of Bankruptcy, Character and Fitness Questionnaire, dated January 31, 2006).

Question 48 asks:

> 48. Have you ever, including when you were a juvenile, been formally or informally detained, restrained, cited, summoned into court, taken into custody, arrested, accused, charged, convicted, placed on probation, placed on supervision, or forfeited collateral in connection with any offense against the law or an ordinance, or accused of committing a delinquent act, other than traffic offenses set forth in response to questions 49 and 50 that follow?

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Applicant's response to question 48 disclosed the following:

1. 1981-1982 juvenile offense for sale or delivery of a counterfeit controlled substance, guilty plea, line and community service;[1]

2. 1984 arrest for carrying a concealed weapon ("butterfly knife"), not charged;

3. 1984 charge of disorderly conduct in connection with an altercation over a girl, pled guilty, fined and performed community service, charge dismissed;

4. 1992 DUI, pled guilty, supervision and fine, charge dismissed;[2]

5. 1999 battery, no contest, supervision and fine, charge dismissed;

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1. Applicant was age 12 at the time of this incident.

2. In this incident, Applicant was involved in a one-car accident. It was estimated that he was traveling 100 miles per hour at the time he lost control of his truck. His blood alcohol level was 2.286 and he tested positive for cocaine. (Tab F, Wood River Police Department Supplement Report, 12/19/92, p.3, Board Exhibit 2, March 7, 2008). Applicant testified that he "would dispute" that he tested positive for cocaine (Tr. 99).

6. 2004 domestic battery, completed couples' counseling, nolle prossed by State;[3]

7. 2005 DUI and possession of less than 2.5 grams of cannabis, pled guilty, fine. (Tab H, Form 48/Record of Bankruptcy, Character and Fitness Questionnaire, dated January 31, 2006, pp. 40-43, 45-48)

On Applicant's December 5, 2000, law school application, he answered "Yes" to the following question:

D. Have you ever been charged with a violation of law resulting in probation, community service, a jail sentence, a fine greater than or equal to $200, or revocation or suspension of your driver's license? If yes, please explain: (Tab I, Plaintiff's Exhibit 4, p. 4, January 18, 2008).

He disclosed the following:

1. 1991 driver's license suspension, suspension completed, license reinstated;

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3. Applicant's girlfriend returned home from a bar about 1:00 a.m. on a weekend when his young son was staying with Applicant. Applicant became upset when she went into his son's room naked. The parties offered different versions of who struck who first. The girlfriend refused medical treatment. (Tab G, Incident Report, Wood River Police Department, Generated on November 22, 2004 @ 11:12:56, p. 2, Board Exhibit 2, March 7, 2008).

2. 1991 driving on suspended license, charge dismissed;

3. 1992 DUI, supervision, license suspension and fine, charge dismissed. (Tab I, Saint Louis University School of Law Application Form, Plaintiff's Exhibit 4, p. 4, January 18, 2008).

Subsequently, Applicant disclosed the following matters to the law school on January 13, 2006:

1. 2005 possession of less than 2.5 grams of cannabis charge, matter pending at the time;

2. 2004 domestic battery charge, charge dismissed. (Tab J, January 13, 2006, letter from Applicant to Dean Rush, Plaintiff's Exhibit January 18, 2008)

On August 7, 2006, Applicant disclosed the following to the law school:

1. 1984 arrest for disorderly conduct, guilty plea, fine and community service, charge dismissed;

2. 1984 arrest for carrying a concealed weapon, charge dismissed;[4]

---

4. Note that the law school only required disclosure of charges that resulted in probation, community service, a jail sentence, a fine of at least $200, or revocation or suspension of a driver's license.

3. 1981/1982 arrest for sale and delivery of counterfeit controlled substance, guilty plea, fine and community service, charge dismissed. (Tab K, August 7, 2006 letter from Applicant to Deans Lewis and Rush, St. Louis University School of Law, Board Exhibit I, January 18, 2008)

An employment reference from Paul Evans, an attorney who employed Applicant as a law clerk in 2002, alleged that another law clerk told the employer that Applicant had encouraged that law clerk to "pad hours." (Tab L, Illinois Board of Admissions To The Bar, Employment Verification Form completed by Paul J. Evans, with attachment, received November 29, 2006) The employer opined that Applicant "was always looking to make a fast buck," and that the employer "reached the point where [he] did not trust him anymore." (Tab L, Illinois Board of Admissions To The Bar, Employment Verification Form completed by Paul J. Evans, with attachment, received November 29, 2006)

Applicant's military records indicate that he entered the military in 1987 and was honorably discharged in 1989 (Tab M, Certificate of Release or Discharge From Active Duty, Commission Exhibit #1, March 7, 2008). In 1987, having served eight months of "continuous active duty" and being 18 years old, Applicant presented to the Naval Hospital Emergency Room "with feelings of violent impulses to hurt himself or others." (Tab N, Narrative Summary (Clinical Resume), Board Exhibit

1, March 7, 2008).[5] The medical record from Applicant's admission indicates that Applicant has a history of and was diagnosed with attention deficit disorder with hyperactivity as a child and was prescribed Ritalin for five years, presented with a history of alcohol abuse since age 12, and that he enlisted in the Marine Corps "in an effort to try and redeem himself in his eyes and the eyes of his family and earn their respect." (Tab N, Narrative Summary (Clinical Resume), Board Exhibit 1, March 7, 2008). By age 15 he was drinking alcohol on a regular basis and was truant from school (Tab N, Narrative Summary (Clinical Resume), Board Exhibit I, March 7, 2008). Applicant reported having a "lifelong history of violent temper including numerous fights, being gratuitously assertive towards strangers, such as friends of stepsisters, a history of fractures in his hands from fights, and going into blind rages" (Tab N, Narrative Summary (Clinical Resume), Board Exhibit 1, March 7, 2008). Eventually, he was expelled from public school "and placed in a special education school because of his behavioral difficulties." (Tab N, Narrative Summary (Clinical Resume), Board Exhibit 1, March 7, 2008). It also provided that Applicant "apparently has done well in the Marine Corps though has continued to abuse alcohol and has had a history of blackouts (Tab N, Narrative Summary (Clinical Resume), Board

5. Applicant testified at his hearing that he went to the emergency room because he was intoxicated and "flipping out" and disputed the information contained in the medical record (see Tr. 127-28, March 7, 2008). We note that Applicant's characterization of his mental status as "flipping out" is not necessarily inconsistent with the military hospital record.

Exhibit 1, March 7, 2008). Applicant reported a "progressive sense of estrangement from his unit, alternating between being frustrated because he feels that he can't advance and feeling that other people are only trying to 'hide and slide' and feeling that they are demoralizing influence." (Tab N, Narrative Summary (Clinical Resume), Board Exhibit 1, March 7, 2008). During his service, Applicant was diagnosed with a "personality disorder resulting in suicidal inclinations" that caused him to be unable "to function effectively in the military environment." (Tab O, Second Endorsement on CO, 1stBN, 8thMar, 2dMar Div ltr 1910 59 of Apr 27 1989, Commission Exhibit #1, March 7, 2008) A "Statement of Immediate Superior" gave Applicant an "excellent" recommendation and concluded that Applicant "has excellent ambition, performs in a highly diligent and motivated manner." That same Statement also indicated, however, that he "needs [to] work on his judgment but shows continual progress as a developing marine." (Tab P, Statement of Immediate Superior "SGT SZABADOS," Commission Exhibit #1, March 7, 2007)

As a result of the above disclosures, Applicant's file was referred to a three-person Inquiry Panel ("Panel") of the Committee on Character and Fitness ("Committee") of the Illinois Board of Admission to the Bar ("Board"), which met with Applicant on June 29, 2007 (Tab Q, Inquiry Panel Report, July 11, 2007). The Panel's report stated that Applicant failed to meet his burden with respect to: (1) the ability to conduct himself with respect for the law and the Rules of Professional Conduct (The Board of Admissions to the Bar and the

Committee on Character and Fitness of the Supreme Court of Illinois Rules of Procedure ("Rule") Rule 6.3(4); (2) the ability to conduct himself with respect for the law (Rule 6.3(5); (3) the ability to avoid acts exhibiting a disregard for the welfare of others (Rule 6.3(6); and (4) the ability to conduct himself in a manner respectful for the law and the profession (Rule 6.3(10). (Tab Q, Inquiry Panel Report, July 11, 2007, p. 2) Similarly, the Panel concluded that Applicant failed to provide sufficient explanation with respect to his bankruptcy and his failure to report subsequent events to his law school (Tab Q, Inquiry Panel Report, July 11, 2007, p. 2).

Applicant requested that the matter be referred to a seven-person Hearing Panel.

At the two-day hearing, in addition to his own testimony, Applicant provided the testimony of: Justice Philip J. Rarick, Edward J. Szewczyk, Steven D. Smith, Marilyn J. Washburn, John J. Pawloski, and Phillip Steinman. The Board provided the testimony of: Dana Elizabeth Underwood, Paul Evans, Dawn Marlow and Mary Pat McInnis. Their testimony is set out below in the order in which it was given.

Evidence Presented at the First Day of the Hearing, January 18, 2008

Justice Philip J. Rarick

Philip J. Rarick is a former justice of the Illinois Supreme Court and currently "of counsel" to the Callis Law Firm in Granite City. Justice Rarick testified that he came to know Applicant when Applicant worked at

the Callis firm as a law clerk (Tr. 18-20, January 18, 2008). The judge characterized Applicant as providing "very good," "thorough" work and was "intelligent", a "good writer" and "a pleasure to work with." (Tr. 20) Applicant told Justice Rarick of the DUI and possession of cannabis charges that Applicant received while employed at the firm (Tr. 21). The judge opined that Applicant had the requisite character and fitness to practice law as set out in Supreme Court Rule 708(c) (Tr. 27). However, he qualified his opinion by stating that it was limited to his interaction with Applicant in the office and that the judge had no knowledge of Applicant's personal life, including what problems brought him before the Hearing Panel (Tr. 27).

Edward J. Szewczyk

Edward J. Szewczyk, an attorney with the Callis Law Firm for the past eight years, became acquainted with Applicant during his nearly two-year term of employment as a law clerk at the firm (Tr. 29-30). Like Justice Rarick, Mr. Szewczyk thought that Applicant would be a good lawyer and could satisfy the eligibility requirements of Supreme Court Rule 708(c) based on his "professional experience at work." (Tr. 32) When asked about Applicant's termination from the firm, Mr. Szewczyk explained that the decision "really had nothing to do with Rob personally," that "historically" the position of law clerk at the firm is a temporary one that typically lasts "about a year and a couple of months," and that the firm "did make Rob a permanent employee, with the understanding that it was going to

be a temporary permanent position as a paralegal/law clerk." (Tr. 31) Mr. Szewczyk knew that Applicant filed a claim for unemployment compensation and did not see a problem with that (Tr. 36-37, 44-45).

Dana Elizabeth Underwood

Dana Elizabeth Underwood, Associate Dean at St. Louis University School of Law, testified regarding the law student's duties to report various violations to the law school (Tr. 49). Applicant filed an online electronic application the first year that the school had an electronic application (Tr. 52). Because there was no electronic signature, before submitting the application a popup block appeared stating that the applicant was confirming that the information provided was true and accurate to the best of the applicant's ability and that the applicant understood his duty to supplement the application if any information changed (Tr. 52). Dean Underwood could not recall whether the popup contained language instructing the applicant to print it for their records, but did testify that it was possible to print the application and the popup, or to print the application but not print the popup (Tr. 76-77). The law school's copy of Applicant's online application does not have any language stating a continuing duty to disclose (Tr. 71). Dean Underwood stated that the first time that Applicant should have been aware of the school's policy of continuous disclosure would have been in the popup for his online application (Tr. 80).

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In the fall of 2003, the school implemented a new program with first-year students of reminding them of their continuing duty to supplement their application and report matters pertaining to character and fitness that have occurred since completing their law school applications (Tr. 60-61). With respect to existing students, the school developed a mandatory exit program for graduating students that included the same information (Tr. 60-61). According to Dean Underwood, this exit program would have been the second time that Applicant should have been aware of the school's policy of continuous disclosure (Tr. 80). Dean Underwood testified that the mandatory meeting for applicant's graduating class was held on September 12, 2005 (Tr. 67). The school notified students of this meeting by electronic newsletter, an August 24, 2005, letter, and by placing a copy of the letter in his student mailbox (Tr. 71-72). The only evidence the Dean could provide that Applicant received notice of and attended the meeting was an unsigned copy of the letter that was in the law school's file of the Applicant (Tr. 71-72). The school did not keep any kind of record of the mandatory meeting to indicate whether Applicant did, in fact, attend the meeting (Tr. 67-73). Applicant first disclosed to the law school his 2004 domestic battery incident and his 2005 DUI and possession of cannabis incident in a letter to the school dated January 13, 2006 (Tr. 62-63).

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Steven D. Smith

Steven D. Smith, former associate dean of St. Louis University School of Law from 1979 to 2003, testified that the school changed its program to specifically remind students of their duty to supplement their applications "at the end of the 1990s or the beginning of the zeros." (Tr. 95) He identified a document included in the law school's 2000-2001 handbook as page 5 of the application that contained a statement preceding the signature line and provided that the applicant understood the duty to supplement answers in writing, "including any change of status as to any part of this application which may occur after the date of the signature." (Tr. 88-89). Mr. Smith then examined a copy of Applicant's online application and testified that there was no similar statement contained in that application (Tr. 90). The student handbook was given to the students each year, and the student would sign something indicating that they had received the handbook (Tr. 107). He did not know whether the handbook "contain[ed] some reflection of the duty to continue" to disclose (Tr. 107). Mr. Smith testified that prior to "the end of the 1990s or the beginning of the zeros" the school did not impose on students a specific continuing duty to disclose new information. (Tr. 95). Once he left the school in June 2003, he did not keep himself acquainted with the school's policies with respect to the duty to disclose (Tr. 98). When asked whether there was any doubt in his mind that students that were present in the evening classes from fall of 2003 until the end of the fall semester of 2005 would have known of the continuing duty to

update their application, Mr. Smith replied, "Well, in my opinion they would have known, although we have Mr. Pritzker's signed application that doesn't, that doesn't have that notice. But the printed application certainly had that notice, and I suspect that the online application was corrected relatively quickly so that was there." (Tr. 105)

Marilyn J. Washburn

Marilyn J. Washburn, an attorney at Riezman Berger since 1997, met Applicant when she began working at the firm one month after he was hired as a legal assistant (Tr. 114). He was hired in November 1997, left the firm in February 2000, was rehired in August 2001 and left in February 2002 (Tr. 114). He left each time when an opportunity arose to work at a firm that practiced in applicant's area of interest, personal injury, and that offered more pay (Tr. 118-19). At Riezman Berger, which specialized in bankruptcy law, Applicant was responsible for making sure that payments were being made and following up with clients if they were not, making sure that secretaries were preparing the necessary motions and getting them to the attorneys for review, tracking hundreds of documents that the firm received by electronic noticing on a daily basis, running reports each day that would produce a list of files with questions that had to be resolved, and conducting legal research (Tr. 115-16). She acknowledged that it was a pressure-filled environment but that there was never any suggestion that outside factors were adversely affecting Applicant's work (Tr. 132-33). Ms. Washburn

described Applicant as "very driven," "very good," and "very detailed oriented," and she would hire him back as an associate if she had a position available (Tr. 120). After reading the eligibility requirements set out in Supreme Court Rule 708(c) she opined that Applicant met those requirements based on her knowledge of Applicant in an employment setting (Tr. 125-126). She had no knowledge of his personal background, including his prior criminal history (Tr. 127-28). However, she did consider herself a mentor to him and recommended that he disclose "everything, traffic tickets, everything" "whether it's in a legal case or on your law school application[.]" (Tr. 123, 129) The impetus for this was that she had just gone through the process of getting reciprocity with Minnesota and completed the state's 40-page application (Tr. 129). Ms. Washburn testified that, without qualification, Applicant's professional character and the quality of his work was good, and she had no reservation about his work (Tr. 131). She would not worry about Applicant handling client funds. When presented with a hypothetical of Applicant representing a minor child of Ms. Washburn's in the context of a major settlement, she stated that she would feel comfortable with that (Tr. 134). When asked whether she would only be concerned about a potential employee's legal ability or also their personal life, Applicant responded, "I look at their resume. I look at their conduct when they're talking to me. I do not interview somebody on what their personal life is. . . . And if the work level is there, then unless there's something in their personal life that creates a problem with the job that I need them to do, then I really don't care." (Tr. 131)

Appendix B

John Pawloski

John Pawloski testified by deposition (Applicant's Exhibit 4). Mr. Pawloski hired Applicant as a law clerk at Evans & Pawloski and Applicant held that position for about six months from approximately September 2002 to January 2003 (Deposition Transcript of John Pawloski, taken on January 10, 2008, p. 29, Applicant's Exhibit 4). Applicant performed legal research, typically going to the office to get whatever materials he needed for the project and completing the project at home, then returning to the office with the finished project (Tab Q-1, Deposition Transcript of John Pawloski, taken on January 10, 2008, pp. 8-9, Applicant's Exhibit 4). Applicant was an independent contractor who submitted an invoice stating the time spent on the project, and he was paid an hourly rate (Tab Q-1, Deposition Transcript of John Pawloski, taken on January 10, 2008, pp. 8-9, Applicant's Exhibit 4). With the exception of one or two instances, Mr. Pawloski, not Mr. Evans, supervised Applicant (Tab Q-1, Deposition Transcript of John Pawloski, taken on January 10, 2008, pp. 9-10, Applicant's Exhibit 4, Tab Q-1). He recalled having one conversation with Mr. Evans regarding how long it took Applicant to complete a research project, and Mr. Pawloski explained to Mr. Evans that it usually takes law students longer to complete a project than attorneys, but that he would speak to Applicant about it (Tab Q-1, Deposition Transcript of John Pawloski, taken on January 10, 2008, p. 31, Applicant's Exhibit 4). Mr. Pawloski also explained to Applicant "the convention of attorney billing," informing him that it was not

appropriate to bill for time spent traveling to and from the office (Tab Q-1, Deposition Transcript of John Pawloski, taken on January 10, 2008, pp. 14-15, Applicant's Exhibit 4). However, issues of Applicant fabricating time, or charging for work not done were never brought to Mr. Pawloski's attention (Tab Q-1, Deposition Transcript of John Pawloski, taken on January 10, 2008, p. 15, Applicant's Exhibit 4). Moreover, had that been the case, Mr. Pawloski "would have fired him because, clearly, you can't have somebody who, in essence, is stealing from clients." (Tab Q-l, Deposition Transcript of John Pawloski, taken on January 10, 2008, p. 14, Applicant's Exhibit 4). Mr. Pawloski was surprised that Mr. Evans made that allegation about Applicant because Mr. Pawloski "didn't consider him to have enough personal knowledge about Rob's work ethic." (Tab Q-1, Deposition Transcript of John Pawloski, taken on January 10, 2008, p. 14, Applicant's Exhibit 4). Mr. Pawloski opined that, although his opinion was limited to his knowledge of Applicant in this employment setting, Applicant satisfied the requirements set out in Supreme Court Rule 708(c), that it would be a "travesty" were he not allowed to practice law, and that the profession needed more people like him, who "have a commitment to champion the causes of people that are under represented." (Tab Q-1, Deposition Transcript of John Pawloski, taken on January 10, 2008, p. 19-20, Applicant's Exhibit 4). If Mr. Pawloski had the financial means, he would extend Applicant an offer to work as an attorney at Mr. Pawloski's current practice (Tab Q-1, Deposition Transcript of John Pawloski, taken on January 10, 2008, p. 23, Applicant's Exhibit 4). While

Mr. Pawloski was only aware of one DUI in Applicant's background, when asked whether other offenses of a misdemeanor nature, such as other batteries or DUIs, should be appropriate considerations to make in determining his character and fitness, Mr. Pawloski responded that he "would need to know the specifics of each of those circumstances before [he] could express an opinion as to whether [he] thought it would be appropriate to rely upon those." (Tab Q-1, Deposition Transcript of John Pawloski, taken on January 10, 2008, p. 36, Applicant's Exhibit 4).

Evidence Presented at the Second Day of the Hearing, March 7, 2008

George R. Pritzker

George R. Pritzker testified that he entered the Marines at age 18 and was discharged two years later due, in part, to the grief he was suffering over his father's recent death at the age of 56 (Tr. 6-9, March 7, 2008). Applicant explained that he was to have served four years and he had felt that he could have had a career in the Marine Corp. (Tr. 28, 91). He stated that it was his choice to leave the military and that his supervisors did not want him to separate from the Marine Corp. (Tr. 89).[6] He and his father had a strained

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6. A statement from Applicant's immediate superior in the military rated Applicant as "Excellent" compared to all other Marines the superior had supervised, stated that he would like (Cont'd)

relationship a few years earlier and the two had become closer when Applicant entered the Marines (Tr. 9-10). His father had been a Marine and was a Korean War veteran (Tr. 9).

Applicant began to develop an alcohol abuse problem while in the Marine Corps that was exacerbated by his father's death. (Tr. 31). He did not use marijuana while in the Marine Corp, but he did experiment with it as a child (Tr. 32, 34). He testified that he did not report to physicians in the military about any problems with marijuana use while in the service (Tr. 32). Applicant could not recall his military records indicating that he was counseled about problems with alcohol abuse (Tr. 31). Applicant understood his problem as clinical depression and not alcohol abuse (Tr. 32). He disagreed with the 1989 diagnosis of military personnel that he had a personality disorder (Tr. 134; see Tab O). He testified that the military had an economic interest in diagnosing him with a preexisting disorder because then the military would not have to pay him military benefits (Tr. 133). Applicant also stated that discussions regarding his separation from the Marines were made with his superior, not with the doctors, and that in order to be honorably discharged the military "had to find a

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(Cont'd)

Applicant to come back to work for him, and that he has been "an excellent supporting marine for the platoon" who needed to work "on his judgment but shows continual progress as a developing marine." (see Tab P, "Statement of Immediate Superior," "Statement of SGT Szabados," dated 5/26/89, Commission Exhibit #1, March 7, 2008).

particular slot to put [him] in terms of the diagnosis[.]" (Tr. 137) According to Applicant, when this was going on he was not aware that he was being diagnosed with a personality disorder (Tr. 137) He stated that his life became a "downward spiral" after his father's death, leading to his 1992 DUI (Tr. 33). It took him over 10 more years to get over his father's death (Tr. 33-34). He testified that there was no particular stressor that might have caused the 1992 DUI but, rather, the incident reflected a "residual" effect from the stress of his father's death and was an example of his self-medicating himself to deal with the grief over the loss of his father and what could have been a good carer in the military (Tr. 98-99).

Applicant was asked about matters in his military records. He acknowledged that in January 1987, during an emergency room visit, where he presented with feelings of violent impulses to harm himself or others, he reported to medical personnel that he had a sense of estrangement from a 30-day training unit, and that the unit was a demoralizing influence (Tr. 121-23, 126-27). Despite the statement in the military report that he presented with feelings of violent impulses, applicant testified that he went to the emergency room because he was "very intoxicated and because "[he] was flipping out." (Tr. 127-28). To further explain the situation he was in at that time, Applicant testified that his experience in the "fleet Marine force" during those 30 days was much different from the discipline of boot camp, which was what he had signed up for and was what he "expected out of life in the Marines." (Tr. 150-51). He felt frustrated by his assignment to that particular unit

which he characterized as an "advanced party training unit". This frustration caused the anger that he expressed to the military (Tr. 150-51).

Applicant identified written statements from four of his military superiors—Captain Sewell, Second Lieutenant Daugherty, Sergeant Szabados, and First Sergeant Baker (Tr. 154-161; see Applicant's Exhibit D, March 7, 2008). Captain Sewell rated Applicant's performance as "excellent" and would have Applicant remain in the captain's command (Tr. 154; see Exhibit D, March 7, 2008). Second Lieutenant Daugherty rated Applicant as "above average," would have him come back and work for him and recommended that Applicant be retained (Tr. 157-160; see Applicant's Exhibit D, March 7, 2008). Sergeant Szabados wrote that Applicant was an "excellent" Marine (Tr. 160; see Applicant's Exhibit D, March 7, 2008). First Sergeant Baker also described Applicant's performance as "excellent" and that Applicant should be discharged due to the medical doctor's recommendation and that the discharge should be honorable (Tr. 161-62; see Applicant's Exhibit D).

Applicant attended law school in the evening and held numerous jobs during the day throughout school (Tr. 11) He recited his employment history as follows: (1) he worked for Tom Ducey in Belleville, Illinois when he applied for law school; (2) next he went to work for Riezman Berger as a bankruptcy paralegal; (3) he then worked for John Pawloski at Evans & Pawloski; (4) he then worked for Lance Mallon in Wood River, Illinois; (5) he returned to work for John Pawloski; (6) he then

went to work as a litigation paralegal at Burroughs, Hepler, Broom, MacDonald, Hebrank & True ("Burroughs"); (7) he spent a short time at Health Capital Consultants; (8) he then went to work at the Callis Law Firm; (9) he was unemployed for about six months; and (10) he is currently employed at Klar Izsak & Stenger in St. Louis, Missouri (Tr. 12).

When asked to explain his January 13, 2006, letter to Dean Rush, Applicant testified that while completing the application to take the Illinois Bar Exam he came across language in the application about a "continuing duty to supplement and amend the application", which piqued his interest (Tr. 13-15). He went to the law school's website and checked the current application and saw similar language (Tr. 13-15, 67). He immediately contacted Dean Rush and disclosed matters that had taken place since he completed his online application (Tr. 15). The Dean instructed him to write a letter and disclose the matters, which Applicant did that same day and hand delivered to the dean (Tr. 15). Applicant testified that his law school application did not have language regarding the continuing duty and that there was not a drop-down menu that contained such language (Tr. 15). After reading the language on the bar application, he "erred on the side of caution and I disclosed that to the law school[.]" (Tr. 68) When asked what kinds of matters he thought had to be disclosed, Applicant stated that when reading the language from his law school application that required information about "any charges which resulted in a fine, court costs, those sort of things," Applicant, in hindsight, did not

think that he would have had any duty to disclose the matters (Tr. 70-71).

The domestic battery charge occurred when Applicant was employed at Burroughs and his immediate supervisor was Phillip Steinman (Tr. 17). He asked his ex-wife to call him and let him know that Applicant would not be at work because he was in jail (Tr. 18). Mr. Steinman visited Applicant in jail (Tr. 18). Asked to explain the circumstances of the domestic battery incident, applicant testified that his son, who was about five years old at the time, was spending the weekend at Applicant's place (Tr. 116). His then girlfriend returned to the apartment in the early morning hours after an evening of drinking at a bar, went to bed and eventually fell asleep lying against him (Tr. 116). When Applicant tried to move her off of him because he was hot she became upset and ran naked into the room where Applicant's son was sleeping (Tr. 116). Applicant went to get her because he did not want his son to see her and she refused to leave (Tr. 116). The two argued, he told her that he could not have his son "exposed to this sort of thing" and that he was breaking up with her Tr. 116-17). When she would not leave the room Applicant went to get the phone to call his former wife and have her pick up their son (Tr. 117). The girlfriend went for the phone, they wrestled over it and she ended up on the floor with Applicant straddling over her and the girlfriend kicking him (Tr. 117). As he tried to move away from her he lost his balance and wound up stepping on her and "immediately felt something squish the wrong way." (Tr. 118).

Appendix B

The 2005 DUI charge occurred when Applicant was employed at the Callis Law Firm (Tr. 19). Applicant refused to take a breathalyzer test and his license was suspended and he had to report that to his employer because his job required him to drive on occasion (Tr. 19). He was also charged with possession of cannabis. He explained that he was filling in as a singer for a friend's band and he and a friend had smoked some marijuana earlier that evening and the amount found when he was stopped for the DUI was left from earlier that evening (Tr. 39). Although he had not been drinking at the time of the domestic battery incident (Tr. 100),[7] he acknowledged that in 2005 he was using marijuana on a weekly basis (Tr. 40). He did not report this offense to the law school at that time because he did not know he had a continuing duty to do so (Tr. 41). He stated that he would have reported it had he known of that duty (Tr. 41). He no longer uses marijuana but he does consume alcohol (Tr. 46). In 1992, he received treatment for alcohol abuse as part of his plea agreement and he testified that at that time he was in need of treatment but that he has not had a problem with alcohol abuse since that time (Tr. 45-46).

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7. The couples' counseling that Applicant participated in as a condition of a dismissal of the charge stemming from the domestic battery incident was conducted at People Resources Operations. The "EAP Initial Assessment" required the counselor to check the applicable "personal problems as assessed by counselor", which included alcohol use and abuse. The counselor only checked "marital relationships" and did not check the box for "alcohol use and abuse" or "other drug abuse." (Tab R, People Resources Operations, EAP Initial Assessment, Date: 02/19/05. Board Exhibit 2, March 7, 2008).

Appendix B

When employed at Evans & Pawloski Applicant worked exclusively for Mr. Pawloski (Tr. 20). He never padded the bills or talked to anybody there about doing so (Tr. 20). He described one conversation about his charging the firm for driving to and from work. He acknowledged that he was told that this was not an acceptable expense and he stopped claiming it (Tr. 20-21) Mr. Evans also taught him what were "reasonable billing conventions and what he thought were reasonable times." (Tr. 64) After that, Applicant "would work within the parameters that [Mr. Evans] set for what he thought was reasonable time spent on the file." (Tr. 64) Applicant testified that he was "dumbfounded" by Mr. Evans' testimony that Applicant padded bills while employed at Evans & Pawloski, describing it as a "ludicrous accusation." (Tr. 26-27)

Applicant knew Mary Pat McInnis as the "job services coach dean at the law school." (Tr. 22) He spoke to her about the possibility of taking home DVDs of the BAR/BRI prep program because of his suspended license (Tr. 22). He denied having a conversation with any person from the law school, other than Dean Rush when he made the above-mentioned disclosures, about a continuing duty to disclose (Tr. 22-23). He could not recall having any conversations with Ms. McInnis concerning updating his law school application (Tr. 23). He estimated that he may have had five or six discussions with her over his four and a half year law school education and that the conversations were limited to BAR/BRI prep (Tr. 144). As a night student, he was on campus from 6:00 p.m, to 10:00 p.m. or 8:00 p.m. to

10:00 p.m. (Tr. 144-45) He could not recall any advertisements or anything of that nature, any bulletins where the law school notified people to attend any special classes to advise him about a continuing duty to update his application (Tr. 23).

Applicant expressed his willingness to submit to a conditional admission (Tr. 104). He also informed the Panel of his desire to have undergone drug testing and a psychiatric evaluation before the hearing and to have been able to present related reports to the Panel at the time of the hearing, but that drug tests and psychiatric evaluations were "prohibitively expensive" for him (Tr. 105).

Applicant was asked to respond to concerns about his ability to manage his anger based on references in his military records to a personality disorder diagnosis and on his subsequent battery arrests. (Tr. 108-09). Applicant testified that with respect to the 1999 battery, he allowed himself to be provoked and lost his temper (Tr. 109, 114). However, he denied committing domestic battery in 2004, stating that he did not intentionally hurt his former girlfriend, but hurt her as he was trying to get the phone from her (Tr. 109). In Applicant's words, "Those incidents do not show a pattern. What it shows is, is that — you know, I was arrested for those things. But that's not the whole story. The whole story is that, yes, in fact I lost my temper once. But as far as the domestic battery is concerned, I didn't do it and I can't in good conscience appear before you and tell you that I did." (Tr. 110) Applicant testified that he only lost his

temper where he acted out violently on one occasion (Tr. 113) He acknowledged that in that instance he should have called the police to handle the situation instead of taking matters into his own hands (Tr. 115).

Phillip Steinman

Phillip Steinman was an attorney at Burroughs when Applicant was employed there as a law clerk (Tr. 170). In fact, Mr. Steinman hired Applicant, who worked for him for one year, after which Mr. Steinman left to work at another firm (Tr. 170). Applicant performed legal research for him (Tr. 172). Mr. Steinman never had any problems with Applicant's billing practices (Tr. 173). He agreed that his practice of defending toxic tort and asbestos cases, was "pretty intense." (Tr. 172, 177) From Spring 2006 through Summer 2007, Mr. Steinman worked at the Callis Law Firm and Applicant happened to be at that firm and also performed legal research for him (Tr. 178). He attested to Applicant's character and fitness to practice law (Tr. 182-83). He gave that opinion knowing that Applicant had some issues, including a bankruptcy and a criminal charge, as well as the domestic battery incident (Tr. 191-92). At no time did Mr. Steinman have the feeling that Applicant was concealing things from him with respect to his background; in fact, Mr. Steinman was "surprised with his candor, with his honesty about the whole thing." (Tr. 192). He saw Applicant when he was in jail for the domestic battery charge (Tr. 170, 183-85). The visit was a personal visit, not a professional visit (Tr. 185).

Appendix B

Paul Evans

Paul Evans knew Applicant when he was a law clerk at Mr. Evans' firm, Evans & Pawloski (Tr. 195). In addition to Applicant, Ms. Dawn Marlow also clerked for the firm at that time (Tr. 196). Applicant was Mr. Evans' first experience with having law clerks (Tr. 217-18). Mr. Evans stated his belief that "false time slips were being submitted for time where [Applicant] was supposed to be working on a job that did not occur." (Tr. 198). Mr. Evans started monitoring "the work outputs versus the time slips being submitted" and his "concerns over work produced per time submitted kept increasing" until he finally told his partner that it would be better if Applicant no longer worked for the firm (Tr. 199). At that point, Applicant, who had worked at the firm for about six weeks, left the firm (Tr. 199, 201-02). Mr. Evans testified that his concerns never caused him to reduce his payments to Applicant (Tr. 215). He expressed his belief that Applicant's "financial motivations and considerations would influence his ability to represent a client for the client's best interest," and that "a client's financial well-being may be in danger if Mr. Pritzker was the client's attorney." (Tr. 200) Mr. Evans was asked to "square" his comment on one portion of the form the Board had him complete to verify Applicant's employment, where Mr. Evans stated that he was "Not sure" whether Applicant was honest and possessed integrity and on another portion of the form where he stated "No" he did not believe the applicant to be worthy of trust and confidence. Mr. Evans testified that he "was trying to give [Applicant] the benefit of

the doubt, but [Mr. Evans] still had [his] doubts. And sometimes [Mr. Evans] feels those lines are not adequate to fully express the situation." (Tr. 205; see Board Exhibit 3, March 7, 2008). Mr. Evans also indicated on the form that Applicant had never been disciplined, testifying that he considered Applicant to have been discharged, not disciplined. (Tr. 206-07). He acknowledged that Applicant had much more interaction with the other partner (Tr. 206). Yet, he disagreed with Mr. Pawloski's deposition testimony that, with the exception of one or two instances, Mr. Pawloski supervised Applicant (Tr. 219).

Despite Mr. Evans' reservations about Applicant, his partner, Mr. Pawloski, hired Applicant when he started his own firm (Tr. 209). Mr. Pawloski also denied having a conversation with Mr. Evans about Applicant encouraging the other clerk to pad hours (Tr. 221). According to Mr. Pawloski, had that been true he would have fired Applicant because the firm could not have an employee who was essentially stealing from the clients (Tr. 221). Mr. Evans stated that his concerns were based on the fact that Ms. Marlow's output greatly exceeded that of the Applicant (Tr. 222). Because he did not feel that clients were being harmed in that costs were not being directly passed on to the clients, his desire was to not continue the relationship between Applicant and the firm instead of discharging him (Tr. 222). Mr. Evans saw no anger management problems on Applicant's part (Tr. 215-16). Despite the denial by Mr. Pawloski, Mr. Evans stated that he remembered having a conversation with Mr. Pawloski about Applicant "fabricating time." (Tr. 223)

Appendix B

Dawn Marlow

Dawn Marlow, the other law clerk at Evans & Pawloski at the time Applicant was a law clerk, testified that the clerks had time sheets on which they would record the client's name and the file number, a brief description of the work completed and the amount of time worked (Tr. 227-28). She recalled one occasion when she and Applicant were sent to a warehouse where a client kept records and the two had to review them (Tr. 228-29). Although she often arrived before Applicant and left alter him, she noticed that he would bill for the same amount of time as Ms. Marlow (Tr. 229). She had a "vague recollection" of one instance when he was ready to leave and he told her to record that the two were at the warehouse "the entire time" even though that was not true (Tr. 229). Ms. Marlow first reported this incident to the firm's secretary and then talked to Mr. Evans (Tr. 229-30). She acknowledged that the foregoing constituted her knowledge of the "entire situation with Mr. Pritzker," and that the two "rarely worked together." (Tr. 230-31) The two were allowed to work from home (Tr. 231). She agreed that "this event was a one-time situation where [Applicant] said, hey, let's leave and just say we were there the same time or whatever[.]" (Tr. 236) She also indicated that she typically did not bill for travel time and that Applicant may have, which could account for a difference in their billable hours (Tr. 236-37).

Appendix B

Mary Pat McInnis

Mary Pat McInnis has been the Assistant Dean for Career Development at Saint Louis University School of Law since July 2001 (Tr. 240). Typically, she was at school between the hours of 8:30 a.m. and 6:30 p.m. (Tr. 271-70). Ms. McInnis identified an affidavit she prepared on January 16, 2008, that she testified were made under facts that she knew to be true (Tr. 242; Tab S, Affidavit of Mary Patrice McInnis, Board Exhibit 2, January 18, 2008). Language informing law students of their continuing duty to disclose matters to the law school was added to the law school's application "probably" in 2003 (Tr. 244). She believed that similar language was printed in the student handbook in 2004 or 2005 (Tr. 254-55). In the meantime, because it had not been on the application, the school presented programs that were mandatory for graduating students to attend where the students were made aware of this continuing obligation (Tr. 244-45).

Dean Rush administered the program to the evening students (Tr. 246). To determine who attended the programs, attendees were required to sign in at the sessions (Tr. 246). If a student did not sign in Dean Rush would contact the student to make sure that they got the information covered during the program (Tr. 246). They had such a program in the fall of 2005, which would have been Applicant's last semester at the school (Tr. 247). Ms. McInnis recalled conversations with Applicant regarding his ability to borrow BAR/BRI tapes

instead of attending sessions at the school because he did not have a driver's license (Tr. 249). At the time, she did not ask him why he did not have his license (Tr. 251). The fifth paragraph of her affidavit states that in the fall of 2005 and in the spring and summer of 2006, Applicant inquired about the videotapes, explaining that he did not have a driver's license and it was difficult for him to come to the review classes (Tr. 259-60; Tab S, Affidavit of Mary Patrice McInnis, Board Exhibit 2, January 18, 2008). Though she did not inquire about the matter with Applicant, she knew that a drivers license suspension was something that would need to be disclosed to both the law school and the Board, and she "reminded him once again of his obligation to update both his law school application and his bar application if he needed. (Tab S, Affidavit of Mary Patrice McInnis, Board Exhibit 2, January 18, 2008). She stated that Applicant "acknowledged that he understood this obligation." (Tab S, Affidavit of Mary Patrice McInnis, Board Exhibit 2, January 18, 2008). When asked why she made the above statements knowing that Applicant's license was not suspended until January 2006, so that she could not have had this discussion in spring 2005, Applicant stated that her affidavit did not state the exact time that she met with him and that she stated "the fall or spring." (Tr. 260-61). She also did not know when she prepared the affidavit that Applicant had disclosed the suspension to the law school in January 2006 (Tr. 261). In her words, "[T]he whole purpose of my comment here was that I had the conversation with him and he acknowledged" that he understood what his obligation was (Tr. 261-62). Ms. McInnis acknowledged that at the time Applicant applied to law school, those

matters that were asked to be disclosed on the application only pertained to charges that resulted in something in addition to the actual charge, such as probation, community service, a jail sentence, or revocation or suspension of a driver's license (Tr. 268).

QUESTIONS PRESENTED TO THE COMMITTEE

Has George R. Pritzker met his burden of demonstrating by clear and convincing evidence that he presently has the moral character and general fitness to be admitted to the Illinois Bar?

STANDARDS TO BE APPLIED

An applicant for admission to the Illinois Bar has the burden to prove by clear and convincing evidence that he has the requisite character and fitness for admission to the practice of law. The Board of Admissions to the Bar ("Board") and the Committee on Character and Fitness of the Supreme Court of Illinois Rules of Procedure ("Rules" or "Rule") Rule 6.1; In re Glenville, 139 Ill. 2d 242, 252, 565 N.E.2d 623, 627 (1990); In re Childress, 138 Ill. 2d 87, 100, 561 N.E.2d 614, 619 (1990). The essential eligibility requirements for the practice of law include: (1) the ability to learn, recall what has been learned, to reason and analyze; (2) the ability to communicate clearly and logically; (3) the ability to use good judgment in conducting professional business; (4) the ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;

(5) the ability to conduct oneself with respect for and in accordance with the law and the Illinois Rules of Professional Conduct; (6) the ability to avoid acts that exhibit disregard for the health, safety, and welfare of others; (7) the ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, creditors, and others; (8) the ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; (9) the ability to comply with deadlines and time constraints; and (10) the ability to conduct oneself properly and in a manner that engenders respect for the law and the profession. Rule 6.3. Of particular relevance to Applicant's application are items (4) through (6), and (8) and (10).

The Committee considers the following factors in assigning weight and significance to Applicant's prior misconduct: (1) age at the time of the conduct; (2) recency of the conduct; (3) reliability of the information concerning the conduct; (4) seriousness of the conduct; (5) factors underlying the conduct; (6) cumulative effect of the conduct; (7) ability and willingness to accept responsibility for the conduct; (8) candor in the admissions process; (9) materiality of any omissions or misrepresentation; (10) evidence of rehabilitation; and (11) positive social contribution since the conduct. Rule 6.5. The "degree of rehabilitation" an applicant must establish depends largely on "the nature of the wrong committed." Childress, 138 Ill. 2d at 100, 561 N.E.2d at 620. The passage of time is a somewhat amorphous criterion in that its relevance is qualified by the admonition that there is no fixed period of time of

exemplary behavior necessary to prove good moral character (see Application of T.J.S., 141 N.H., 697, 701, 692 A.2d 498, 501 (N.H. 1997).

ANALYSIS

In Applicant's case, the factors that are of particular relevance are the seriousness of the conduct, the factors underlying the conduct, the timing of some aspects of the conduct, Applicant's willingness to accept responsibility for it, as well as his candor at the hearing, and evidence of rehabilitation. In evaluating Applicant's conduct, the Committee considered three principle factors: the actual conduct on Applicant's part; his psychological and related substance abuse issues; and Applicant's knowledge concerning his duty to disclose information to the law school. These will be discussed in turn.

The majority of the Committee found that no single act was serious enough by itself to warrant denying Applicant's admission to the Bar. The 1981 arrest for sale and delivery of counterfeit controlled substance and the two 1984 arrests, for carrying a concealed weapon and for disorderly conduct, occurred when he was 12 and 15 years old, respectively. Considering his age at the time, the circumstances of his life at the time, and the many years that have since passed, the majority of the Committee did not find that these incidents precluded Applicant from establishing his character and fitness to practice law.

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His driver's license suspension in 1991, driving on a suspended license in 1991, and 1992 DUI, separately, do not support denying his admission to the Bar based on a lack of character and fitness to practice law. His 1992 DUI, in and of itself, would not provide a basis as well, given the time that has passed since the charge. His 1999 arrest for battery, for which Applicant has accepted total responsibility and acknowledged that he should have called the police rather than handle the situation in a confrontational manner, in and of itself, does not provide a basis for denying Applicant admission to the bar. With respect to the 2004 charge of domestic battery, there is evidence to support the fact that the two parties involved in this incident share responsibility for it, as evident by the Applicant's testimony, police records, court ordered couples' counseling and the State subsequent nolle prosequi of the matter. Finally, the 2005 DUI is fairly recent, but Applicant denies that he was legally intoxicated at the time and was willing to go to trial on the reckless driving charge. He had witnesses willing to testify in court with respect to his alcohol consumption hours before he was stopped by the police.

The majority of the Committee concludes that no single incident is serious enough to disqualify Mr. Pritzker from the practice of law. However, we do not look at the incidents in isolation. Examining Applicant's cumulative conduct raises concerns for Applicant's disrespect for and inability to conform his behavior to the law, as well as conduct that shows a disregard for the safety and welfare of others. However, just as we do not view each incident in isolation from

one another, we must also not ignore the circumstances surrounding those incidents. The 1991 driver's license suspension and 1992 DUI occurred at a time when Applicant was still recovering from his father's death. Both his military medical records and Applicant's testimony establish that Applicant had a troubled youth and that he entered the military to redeem himself in his father's eyes. The two reportedly grew closer once Applicant entered the Marine Corps and Applicant was devastated when his father died unexpectedly and shortly after Applicant's entry into the military. By his own account, after his father's death Applicant drank heavily and it took him about 10 years to recover from the loss of his father. That background provides perspective with respect to the 1991 and 1992 incidents and does not make it likely that Applicant has a pattern of engaging in conduct that shows a disregard for the safety and welfare of others and the inability to conform his conduct to the law.

The two battery incidents and the history in the military medical records of a violent temper and violent urges to harm himself or others raise similar concerns. However, the two incidents bear no significant resemblance to each other and, therefore, the majority of the Committee finds no pattern of behavior that would raise serious character and fitness issues. Applicant accepted complete responsibility for the 1999 incident and there was nothing in the record to suggest that he did not bear sole responsibility. He made no attempt to minimize the incident or his role in it. With respect to the 2004 incident, there is evidence to support a finding

that both he and his former girlfriend shared responsibility for the events that lead up to the Applicant stepping on her as they struggled for the phone. There is considerable merit to Applicant's concern that his former girlfriend's behavior would be deleterious to his son who was sleeping nearby. As a result of the incident, Applicant and his girlfriend attended couples' counseling. Thus, a cumulative examination of Applicant's conduct, and the circumstances and context in which it all occurred, does not support a finding that Applicant has engaged in a pattern of conduct that reflects an inability to conduct him with respect for the law and to avoid acts that exhibit disregard for the health, safety and welfare of others.

The U.S. Supreme Court has also cautioned that we must consider the nature of the offense in determining whether the offense adversely affects a person's good character (Schware v. Board of Bar Exam of State of N.M., 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796, 64 A.L.R.2d 288 (1957). An offense that does not involve moral turpitude does not demonstrate that the applicant lacks the requisite moral character for admission to the bar. Id. In In re Haukebo, 352 N.W.2d 752 (Minn. 1986), the court held that the applicant's three convictions for driving under the influence over a two-year period did not necessarily involve moral turpitude where he could provide sufficient evidence of reform and rehabilitation from acts or conduct on which the negative moral character determination was made. Here, we reach the same conclusion with respect to Applicant's offenses, where he took complete

responsibility for all offenses but the 2004 domestic battery and the 2005 DUI. We note also that one incident never resulted in a formal charge and all but one of the other incidents resulted in either a nolle prosequi or a dismissal of the charge.

We also consider the evidence that Applicant has worked during the day at various law-related jobs and reportedly performed well. The recommendations from his immediate supervisors have uniformly been positive. He has kept current on his child support obligation, despite his own financial difficulties that caused him to file for bankruptcy (see Tab T, Affidavit of Bonnie Fennewald (Applicant's former wife), dated January 30, 2006). These facts attest to attitudinal changes in Applicant since he started law school and provide sufficient evidence of reform and rehabilitation from the conduct that resulted in this hearing. (See In re Haukebo, 353 N.E.2d 751)

Next, the Committee considers whether there are aspects of Applicant's personality and possible substance abuse issues exhibited by the various misconduct discussed above. Specifically, the Committee considers whether there is evidence of anger management and alcohol abuse problems sufficient to support a finding that Applicant presently lacks the requisite character and fitness to be admitted to the Illinois Bar. Evidence of anger management problems is found in the battery arrests and the references to Applicant's violent history and presenting with violent impulses in the military records when Applicant was

admitted to the Naval Military Hospital in 1987. The Committee finds that the two battery incidents do not justify denying him admission to the Bar. The Committee is aware that a military evaluation in the context of an early discharge may he biased toward diagnosing a personality disorder. Such a disorder, by definition, pre-dates military service and can be used to deny a service connected disability rating to a separating sailor, soldier or marine. Applicant reported at the age of 18 to having a "lifelong history of violent temper" but there is nothing in the record to support that statement as literal truth. After his reported "violent impulses" in 1987, his next incident of a violent nature was his 1999 arrest for battery, in which there was no party suffered serious injury. Viewed in light of the uniformly positive evaluations of his superiors, the Committee did not place significant weight on the military psychiatric report.

Applicant's litany of incidents disclosed on his law school and bar applications does not support a finding that he suffers from a personality disorder that provides a basis for denying his admission to the Illinois Bar. The various incidents reported from 1981 through 1984 reflect a troubled adolescent and teenager who may have suffered from an attention deficit disorder and who was having serious problems with his father. Applicant's attempt to prove himself worthy to his father by becoming a marine was unfortunately cut short by his father's death. By Applicant's own admission it took him a long time to get over his father's death and this is reflected in the 1992 DUI and 1999 battery arrests.

The record also does not support a finding that Applicant's consumption of alcohol rises to the level of alcohol abuse such that he would be unable to conduct himself with a high degree of integrity in his professional relationships, conduct himself in accordance with the law, avoid acts that exhibit disregard for the welfare of others, conduct himself diligently in fulfilling his obligations to clients, and conduct himself properly and in a manner that engenders respect for the law. (See Rule 6.3) Evidence of a possible substance abuse problem consists of his DUIs, and the statement in the 1987 military medical record that he "presented with a history of alcohol abuse since age 12, regularly since age fifteen." However, the counselor who provided counseling to Applicant and his former girlfriend following the 2004 domestic battery incident record did not check off on the "EAP INITIAL ASSESSMENT" that Applicant had alcohol use problems (see Tab R. Peoples Resource Operations, EAP Initial Assessment, Date: 02/19/05, Board Exhibit 2, March 7, 2008). Applicant reported to the counselor that he consumes two to three drinks two to three times a week (see Tab R, Peoples Resource Operations, EAP Initial Assessment, Date: 02/19/05, Board Exhibit 2, March 7, 2008). The counselor also checked a box on the assessment form that provided "No life areas affected by alcohol or other drugs." (see Tab R, Peoples Resource Operations, EAP Initial Assessment, Date: 02/19/05, Board Exhibit 2, March 7, 2008). At the hearing, Applicant acknowledged that he had a drinking problem while in the Marine Corps that only became worse for a time after his father died, that he received treatment

for alcohol abuse as part of his 1992 DUI plea agreement and that he was in need of treatment at that time, but that he has not had a problem with alcohol abuse since that time. There is no evidence in the record that Applicant presently has an alcohol abuse problem that would provide a basis for barring his admission to the practice of law in Illinois on character grounds. This is unlike In re Application of Lynch, 116 Ohio St.3d 187, 877 N.E.2d 656 (Ohio 2007), where the Ohio Supreme Court denied the applicant admission to the Ohio Bar but allowed him to reapply one year later provided he demonstrated continued compliance with his Ohio Lawyers Assistance Program ("OLAP"). In that case, the applicant disclosed two alcohol-related incidents, one in 2004 and one in 2006. In the first incident applicant was arrested for carrying a deadly weapon with the intent to injure and second-degree assault. Two years later he was arrested and charged with disorderly conduct. He described his drinking habits as going to a bar about twice each week and drinking about six alcoholic beverages in a four-hour period. A hospital assessment diagnosed him as alcohol dependent and he entered a two year contract with OLAP. At the time of his character and fitness hearing he was also receiving intensive outpatient treatment at a hospital. The court determined that applicant did not possess the requisite character and fitness to be admitted to the Ohio Bar because he demonstrated a lack of remorse and personal responsibility for the two incidents, he demonstrated an existing dependence on alcohol and a pattern of disregarding the law, and he was in denial about his alcoholism. Unlike Lynch, Applicant was not diagnosed

as alcohol dependent and did not have recent alcohol-related arrests. At the time of the 2004 domestic battery incident, it was his former girlfriend who had consumed the alcohol, not Applicant. Also, Applicant's intent at the time was to calm his girlfriend down so his young child would not be exposed to anything inappropriate. As previously discussed, there was evidence in the record indicating that both parties were at fault. The Committee also notes that Applicant disputes that he was driving under the influence with respect to the 2005 DUI. He did not dispute prior DUIs, but he claimed that he was not intoxicated at the time of the 2005 charge and that he had three witnesses who were prepared to testify to that effect at a trial. The Committee also notes the fact that Applicant was awarded joint custody of his young son (Tab T, Joint Parenting Agreement, filed October 17, 2001). Common sense would suggest that had Applicant had a history of violence or some other serious personality disorder it would have come out during his divorce proceedings and the child's mother, having been married to Applicant for four years, would not have entered into this agreement (see Tab U, Petition for Dissolution of Marriage). Also, her petition for dissolution cited irreconcilable differences; there were no allegations of a violent temper on his part or inappropriate conduct of any kind (see Tab U, Petition for Dissolution of Marriage).

Next, the Committee considers the disclosure issue. It is clear that at the time Applicant applied to law school the application itself did not contain language informing

applicants of a continuing duty to report matters to the school. At some point during Applicant's years at the law school, the school changed its policy and began requiring such a duty. There is contradictory evidence in the record as to when Applicant first learned of the new disclosure policy. The evidence presented on this issue consisted of the testimony of Applicant, Dean Underwood and Dean McInnis. Dean Underwood testified that a pop-up box should have appeared when Applicant was ready to submit his online application and world have informed him of the disclosure duty. However, there was no evidence of the actual pop-up and what it would have stated. Applicant testified that when he submitted the application no such pop-up appeared. Both Dean Underwood and Dean McInnis testified about a mandatory exit program for graduating students at which the duty would have been discussed, and that students would have received notice of the program by email and by a letter in their student mailbox. Dean Underwood produced an unsigned copy of this letter from Applicant's law school file. The only proof of attendance was a sign-in sheet. However, the school did not keep those sheets or any record of attendance to indicate whether Applicant attended the meeting. Dean McInnis also provided an affidavit stating that she spoke with Applicant in the fall of 2005 and the spring and summer of 2006 and learned of his driver's license suspension, and that she reminded him of his obligation to update his law school application. However, his license was not suspended in the fall of 2005 and by the time they next spoke, which would have been the spring of 2006, Applicant had already disclosed the

matters to Dean Underwood the previous January 2006. Applicant testified that he neither received notice of, nor attended, the meeting. Applicant stated that he first learned of the disclosure duty when completing the Bar Application and seeing language to that effect on the application. He then checked the current law school application on the school's website and saw that it contained similar language. At that point, he immediately disclosed relevant matters that had occurred since the time he submitted his original law school application. Courts dealing with applicants who gave untrue testimony on bar applications have held that the denial of certification can be upheld only if it can be concluded beyond a reasonable doubt that applicant's version not only was objectively false but was advanced by the applicant with the intent to deceive the committee (see Siegal v. Committee of Bar Exan.iners, 10 Ca1.3d 156, 514 P.2d 967 (Cal. 1973). Here, there is no evidence that Applicant intentionally withheld information from the law school that he had a duty to disclose. The evidence was conflicting as to when he knew of his continuing duty to disclose. Even taking certain parts of Ms. McInnis' affidavit as true, especially that portion that she spoke with him about the duty to disclose in spring or summer of 2006, Applicant had already disclosed the requisite matters to the law school months before. Moreover, he made full disclosure of matters to the Board. There is no evidence in the record to indicate that Applicant acted with any intent to deceive the law school. The majority finds that the issue of disclosure does not establish that Applicant lacks the requisite character and fitness to practice law in Illinois.

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Finally, the Committee considers the evidence that Applicant may have "padded" his hours when a law clerk at Evans & Pawloski, and may have encouraged Ms. Marlow to do the same. Applicant did not dispute that Mr. Pawloski had to explain to him what was proper to bill the firm and what was not proper to bill when it came to the firm's attention that Applicant was billing the firm for the time spent traveling to and from the office. It was also brought to his attention on occasion that he might be spending too much time on an assignment. However, according to Applicant, that was the nature and extent of any billing errors on his part. Mr. Evans testified that, after Applicant had worked six weeks at the firm, he believed that Applicant was submitting time slips for work that he did not do and that it would be better if Applicant no longer worked for the firm. However, Mr. Evans never reduced his payments to Applicant and did not formally fire him. Mr. Evans provided arguably conflicting responses on the employment verification form, and he acknowledged that he never disciplined Applicant and that Applicant had much more interaction with Mr. Pawloski.

Mr. Pawloski testified that he supervised Applicant. He specifically denied having a conversation with Mr. Evans about Applicant encouraging Ms. Marlow to pad hours, and testified that had that been true he would have fired Applicant. Ms. Marlow had a "vague recollection" of one occasion where Applicant was ready to leave and he told her to record that the two were working the entire time even though that was not true. According to Ms. Marlow the two "rarely worked

together." Mr. Evans had testified that his concerns were based on the fact that Ms. Marlow's output greatly exceeded that of the Applicant. Ms, Marlow testified that she did not bill for travel time and that Applicant may have, which could have accounted for a difference in their billable hours.

The claim made by Mr. Evans is a very serious one. The majority of the Committee concludes however that Applicant has sustained his burden of proof in regard to this issue. The majority of the Committee believed that, based primarily on Mr. Evans' demeanor while testifying, that there was a serious personality conflict between Applicant and Mr. Evans. Mr. Evans commented with disapproval about Applicant's late night hours. While the Committee does not doubt Mr. Evans' good faith in these proceedings, a number of facts lead us to conclude that his claims do not justify denial of Applicant's license.

Mr. Evans' own actions contemporaneous with the events in question are not consistent with a belief that Applicant committed moral turpitude. Mr. Evans did not reduce payments to Applicant and did not fire or otherwise discipline him. In contrast, Mr. Pawloski, who worked much more closely with Applicant than did Mr. Evans, provided a glowing recommendation and corroborated Applicant's testimony concerning the billing problem. Both Applicant and Mr. Pawloski explained the billing problem as Applicant's failure to understand that it was not proper to bill for travel time to and from home and not to spend too much time on

certain projects. Ms. Marlow's testimony was, at best, vague on the precise issue in question. Unlike the other acts we have examined, this particular allegation does involve an act involving moral turpitude. Given the serious nature of the allegation, and the weak evidence of it in the record, the Committee will not base a character and fitness determination on it absent substantial corroboration, which is not present in this record.

The Committee accords weight, in terms of rehabilitation, to the character testimony provided by Justice Rarick, Mr. Edward Szewczyk, Ms. Marilyn Washburn and Phillip Steinman. Although none was familiar with the entirety of the conduct that placed Applicant before the Committee, and their knowledge of Applicant was limited to the employment setting, the fact that they took the time to testify on his behalf is significant. We note that all of them attested that he had the requisite character and fitness to practice law. Justice Rarick knew of Applicant's DUI and possession of cannabis charges. Mr. Steinman was aware of Applicant's bankruptcy and a criminal charge as well as the domestic battery incident. He testified that Applicant was surprisingly candid and honest regarding his background. Cumulatively, the testimony of these several character witnesses provide rehabilitation evidence.

The Committee placed little weight on the testimony of the character witnesses concerning the quality of Applicant's performance of the duties he was given at

the several law firms. Both Ms. Washburn and Mr. Steinman characterized their practices as pressure-filled environments that Applicant handled very well. Mr. Steinman had no problems with Applicant's billing practices. Our task in this case is not to evaluate the Applicant's ability to practice law but rather his fitness. But their testimony did provide useful information in evaluating Applicant's fitness to perform under the normal pressures and stresses of the everyday practice of law.

Finally, the Committee recognizes that Applicant's record includes criminal charges, possible personality disorders and suggestions of alcohol abuse. However, each incident, each hint of a possible personality disorder or suggestion of alcohol abuse must be examined in the context in which it occurred. There are three significant time frames in terms of determining the context: Applicant's adolescent/teenage years from 1981 through 1984; the late 1980s through the 1990s when he decided to enter the military; and 2000 to the present when he decided to become an attorney and successfully completed law school and passed the bar exam. The majority of the Committee, while noting the juvenile record, did not accord those offenses significant weight. The Committee also notes that the 1992, 1999 and 2004 charges were dismissed or nolle prossed.

The context explains Applicant's behavior and provides the basis for the Committee's finding that Applicant has sustained his burden of proving that he presently has the requisite character and fitness to be

admitted to the Illinois Bar. After a two-day hearing, the Committee had considerable opportunity to observe Applicant. He presented himself as a candid, driven, intense, hard working and bright individual, who cares deeply for his son. He has both acknowledged and learned by his mistakes, matured as time has passed, and has lived a useful and constructive life for several years—working during the day and attending law school at night.

CONCLUSION

The Committee has carefully considered the entire record. For the reasons stated above, the Committee finds, by a vote of 3 to 2, that George R. Pritzker has met his burden of proof by clear and convincing evidence that he presently possesses the requisite moral character and fitness to practice law in the State of Illinois necessary for certification by the Character and Fitness Committee.

HEARING PANEL DISSENT

I. FACTUAL FINDINGS

Two members of the Hearing Panel declined to certify Applicant pursuant to Illinois Supreme Court Rule 708(c) because they found Applicant failed to meet the essential eligibility requirements for the practice of law as follows:

> (3) the ability to exercise good judgment in conducting one's professional business;

(4) the ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;

(5) the ability to conduct oneself with respect for and in accordance with the law and the Illinois Rules of Professional Conduct;

(6) the ability to avoid acts that exhibit disregard for the health, safety, and welfare of others;

(7) the ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, creditors, and others;

(8) the ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others;

(10) the ability to conduct oneself properly and in a manner that engenders respect for the law and the profession.

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Specifically, the Hearing Panel Dissent felt that its decision was not based upon one single event or act, but an accumulation of Applicant's past conduct, to-wit:

1. *July 22, 1986* - Carrying a Concealed Weapon in Daytona Beach, Florida.

2. *January 8, 1987* per the National Personnel Records Center records, Applicant was a Private First Class in the United States Marine Corp when he was admitted into the psychiatric unit due to violent impulses to hurt himself and others. Patient admitted to a lifelong history of a violent temper including "numerous fights, being gratuitously assaultive towards strangers such as friends of stepsisters, history of fractures in his hands from fights and going into blind rages." Applicant also presented with a history of alcohol abuse since age 12 and regularly consuming alcohol since age 15.

Psychological testing (MMPI) was completed and the profile was valid. The profile was consistent with an individual showing "antisocial tendencies, problems with expression of anger, difficulty delaying gratification, and difficulty learning from past experiences and displaying antisocial acting out. ***Applicant was strongly counseled not to abuse alcohol.***

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February 21, 1989 – Second psychiatric hospitalization. Applicant was now a Lance Corporal. He was admitted to the psychiatric unit because he was playing Russian Roulette with a loaded gun against his head allegedly as a result of the recent death of his father. Applicant admitted to drinking a twelve pack of beer every night. He was found to be completely responsible and accountable for his behavior. The doctor recommended an administrative discharge because "although he was technically fit for full duty, he does have a character and behavior disorder which is of sufficient severity to preclude further satisfactory military service."

March 15, 1989 – Office of the Division Psychiatrist wrote "The patient has had two psychiatric hospitalizations in the past year. . . . Both hospitalizations resulted from his ***inability to handle stress,*** resulting in violent impulses to hurt himself or others. The patient has a lifelong history of emotional instability and poor coping skills in the 'face of stress.' There has been no change in his basic personality makeup. His ability to handle the routine stresses of the USMC duty are very poor and his continuation on active duty will prove to be detrimental to the command's mission. ***His continuation on active duty also carries with it the omnipresent potential for destructive***

acting-out behavior directed at himself or others. [Emphasis added]" The diagnosis remains:

a. Personality Disorder NOS with Borderline and Impulsive Components

b. Attention Deficit Disorder – Residual type

c. Mixed Substance Abuse (Alcohol, Marijuana, Amphetamines) In remission.

3. *December 19, 1992* – Driving Under the Influence Resulting in An Accident. Applicant drove 100 mph on Berm Highway in Wood River, Illinois when he lost control of the vehicle, flipped his car, caused it to skid upside down approximately 148 feet. Pritzer's blood alcohol level was .286 and he also tested positive for cocaine.

5. *February 8,1998* – Operating an Uninsured Motor Vehicle, Expired Registration, etc.

6. *June 25, 1999* – Roxana Police arrested him for speeding with a disposition of Nolle Prosequi on August 5, 1999.

7. *September 5, 1999* – Charged with Battery by the Bethalto Police Department during a visitation exchange involving his stepdaughter and her father. It escalated into Mr. Pritzer head butting Gregory R. Smock resulting in criminal charges being brought against him for violation of 720 ILCS 5/13-3(a)(1). An arrest warrant was issued in Madison County Case No. 99-CM-3903 and bail was set at $10.000.

8. *June, 2004* – Chapter 7 Bankruptcy (filed while attending law school).

9. *November 21, 2004* – Charged with Domestic Battery. Alcohol involved. He got into a fist fight beating his wife while his son "slept" at his feet. This was not the first altercation and it occurred while Applicant was in law school.

10. *December 3, 2005* – Charged with Driving Under the Influence of Alcohol and possession of cannabis less than 2.5 grams ***while attending law school.*** Applicant Pritzer refused to submit to any alcohol or chemical testing. Applicant failed to promptly notify law school of his arrest until after he received his degree/ graduated.

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11. St. Louis University Law School conferred a Juris Doctorate degree on Applicant. Shortly after that date, he called Dean Douglas Rush to inform him of certain conduct issues which occurred during law school, but which he did not disclose until after he received his degree. In addition, Applicant failed to disclose to the law school two conduct offenses on either his application or his January 13, 2006 supplemental disclosure. Those acts were the 1984 arrest for disorderly conduct and 1981/82 arrest for sale of counterfeit controlled substances. Dean Rush wrote "Had Mr. Pritzker made full disclosure of these matters before admission or prior to graduation it would have merited further review and potentially could have denied him admission to the School of Law or resulted in an investigation which could have led to the denial of conferral of his degree. However, at this time, the School of Law will not initiate steps to revoke his degree and will defer to the Board's investigation [of] the impact of his late and incomplete disclosure on his fitness to practice law."

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II. TESTIMONY

A. Many attorneys were called to testify on behalf of Applicant including Marilyn J. Washburn, John Pawlowski, Phillip Rarick. The witnesses testified that Applicant did good legal work, however, Phillip Rarick testified that he would not vouch for his personal traits. Moreover, the witnesses were unaware of the extent of his misconduct. It is clear from the record that Applicant possess the ability to perform legal work, however, ability does not equate to fitness. In re McCallum, (1945) 391 Ill. 400, 415, 64 N.E.2d 310.

B. Applicant's testimony:

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Applicant stated that the Panel should not consider his criminal conduct because he was not a convicted felon, however, Applicant did not deny that he was in fact guilty of the offenses. He admitted to using his legal knowledge and experience to "beat the charges."

In 1992 he admitted to drinking ripple schnapps, driving over 100 mph and then flipping his car several times after consuming alcohol and using cocaine. His friends tried to stop him from driving, but he drove anyway. In 2005, when he was again arrested for DUI, he admitted to the Panel that he was smoking marijuana in the car earlier that evening and that he used marijuana at least once per week. ***In 2005, Applicant was in law school.*** Applicant also denied having any

anger management problems, yet in 2004 while in law school he was involved in a domestic assault while intoxicated. During this incident his minor son was present and asleep at his feet. Despite his chronic and repeated legal problems as a result of alcohol and drug abuse, Applicant denies having a problem with alcohol or drugs. By his own admission during the hearing, Applicant continues to use alcohol as a method to reduce life stress.

III. DECISION

In determining whether to recommend to the Board that the present character and fitness of Applicant qualifies him for admission to the practice of law, the Hearing Panel Dissent considered the following factors in assigning weight and significance to prior misconduct (a) age at the time of the conduct; (b) recency of the conduct; (c) reliability of the information concerning the conduct; (d) seriousness of the conduct; (e) factors underlying the conduct; (f) cumulative effect of the conduct; (g) ability and willingness to accept responsibility for the conduct; (h) candor in the admissions process; (i) materiality of any omissions or misrepresentations; (j) evidence of rehabilitation; and (k) positive social contribution since the conduct.

The twenty year old psychiatric records would not be of significant interest, but for the fact that Applicants subsequent conduct reaffirms the accuracy of the psychiatrist's opinion. An applicant

for admission to the Illinois Bar must establish his good moral character and general fitness to practice law pursuant to Supreme Court Rule 708. In this instance, the question presented is whether the applicant presented sufficient evidence to sustain his burden of showing good moral character and general fitness to practice law, and the Dissent found that he did not. The cumulative effect of the incidents presented to the Committee indicates a character deficit that prohibits the Dissent from recommending certification.

Applicant is unable to take ownership responsibility for his past transgressions. He lacks insight into his alcohol, drug and behavioral problems. While he performs good work while under the supervision of an attorney, his life is replete with events in which he could not conform his conduct to basic lawful expectations when under stress. For instance, the military found Applicant was unfit to serve because of his psychiatric problems and his inability to handle stress. As the psychiatrist wrote "active duty carries with it the omnipresent potential for destructive acting-out behavior directed at himself or others." The implication is that Applicant wasn't trustworthy around weapons. A law license carries with it enormous responsibility and its misuse can irrevocably destroy lives just like a weapon placed in the wrong hands. There is no dispute that the practice of law is at times very stressful. The Applicant's past conduct clearly demonstrates that he failed to handle the stress of military service, the

pressures of law school, interpersonal relationships or other "triggers" without resorting to alcohol, drugs and destructive behavior. Applicant wholly failed to establish his rehabilitation and in fact stated to the Panel that he doesn't have a problem with alcohol, drugs, inappropriate behavior or stress. His words and argument beguile the seriousness of his transgressions. The majority decision was based upon a misguided belief that the Applicant might change once he got a law license and that he had "beaten the charges" and therefore the prior acts were "not that big of a deal." Other comments dealt with giving the Applicant the "benefit of the doubt." However, the purpose of the Committee on Character & Fitness is to protect the public and the Bar, not to provide a "test flight." It is implausible to conclude that twenty years later, after Applicant has abused an ever increasing amount of drugs and alcohol without treatment, that he has now reformed into a person who can defend and protect the citizenry by practicing law.

The burden of proving good moral character and general fitness necessary for the practice of law is on the Applicant. *In re DeBartolo,* 111 Ill.2d 1, 5 (1986); *In re Ascher,* 81 Ill.2d 485, 498 (1980). This is because a license to practice law is *a guaranty that the person holding the license is fit to assume the responsibility for safekeeping the confidences of others while aiding and assisting them in their legal and business affairs. In re Rosenberg,* 413 Ill. 567, 576 (1953). The Applicant must show his fitness by clear and convincing evidence. *In re Loss,* 199 Ill.2d 186, 194 (1987).

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The Applicants disregard for the law and the safety of others while driving impaired and at high speed, his repeated violent episodes and his minimization of his conduct do not present the Dissent with evidence that Applicant is prepared to assume the independent and principled stance necessary of a counselor and advocate. The basic goal of this standard is to safeguard the public, maintain the integrity of the profession and to protect the administration of justice from reproach. *In re Berkley,* 96 Ill.2d 204 (1983).

Alcoholism and drug abuse are particularly serious problems for attorneys. Even if an attorney is not completely dependent, either physically or psychologically, on alcohol or drugs, the impairing effects on the attorney's judgment can be profound. Thus in determining any Applicant's character and fitness to practice law, this Committee must be acutely sensitive to the issues involving alcohol abuse and dependency. *In re Driscoll,* 85 Ill.2d 312 (1981), the Court held that the abuse of alcohol or drugs does not excuse inappropriate behavior. Applicant failed to present clear and convincing evidence of his rehabilitation from alcohol, drugs and/or his past conduct problems. The Dissent concluded by clear and convincing evidence that Applicant was not rehabilitated and that he had not met his burden of proof. Therefore the Dissent did not certify Applicant.

Dated:

s/ Roy C. Dripps
Roy C. Dripps, Chairman

APPENDIX C — ORDER OF THE SUPREME COURT OF ILLINOIS FILED DECEMBER 22, 2008

IN THE
SUPREME COURT OF ILLINOIS

M.R. 12409

In re:

George R. Pritzker,

Applicant

ORDER

This cause coming to be heard on the motion of applicant George R. Pritzker for reconsideration of this Court's order of November 17, 2008, for setting of briefing schedule, and for setting of oral argument, and the Court being fully advised in the premises;

It is ordered that the motion is denied.

Order entered by the Court.

APPENDIX D — RELEVANT PORTIONS OF SECTION ONE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

U.S.C.A. Const. Amend. XIV § 1

* * *

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX E — RELEVANT PORTIONS OF ILLINOIS SUPREME COURT RULE 708

Ill. Sup. Ct. R. 708

Committee on Character and Fitness

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(f) If the committee is of the opinion that the law student registrant or applicant is of good moral character and general fitness to practice law, it shall so certify to the Board of Admissions to the Bar, and the Board shall transmit such certification to the Court together with any additional information or recommendation the Board deems appropriate when all other admission requirements have been met. If the committee is not of that opinion, it shall file with the Board of Admissions to the Bar a statement that it cannot so certify, together with a report of its findings and conclusions.

(g) A law student registrant or applicant who has availed himself or herself of his or her full hearing rights before the Committee on Character and Fitness and who deems himself or herself aggrieved by the determination of the committee may, on notice to the committee by service upon the Director of Administration for the Board of Admissions in Springfield, petition the Supreme Court for review within 35 days after service of the Committee's decision upon the law student registrant or applicant, and, unless extended for good cause shown, the Committee shall have 28 days to respond. The director shall file the record of the hearing with the Supreme Court at the time that the response of the Committee is filed.

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APPENDIX F — RELEVANT PORTIONS OF ILLINOIS STATUTE 730 ILCS 5/5-6.3.1

730 ILCS 5/5-6.3.1

Incidents and Conditions of Supervision

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(f) Discharge and dismissal upon a successful conclusion of a disposition of supervision shall be deemed without adjudication of guilt and shall not be termed a conviction for purposes of disqualification or disabilities imposed by law upon conviction of a crime.

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